

No. 10386

United States
Circuit Court of Appeals
For the Ninth Circuit.

PACIFIC POWER & LIGHT COMPANY, and
AMERICAN POWER & LIGHT COMPANY,
Petitioners,
vs.
FEDERAL POWER COMMISSION,
Respondent.

Transcript of the Record
In Three Volumes
VOLUME II
Pages 273 to 559

UPON PETITION FOR REVIEW OF ORDER OF THE
FEDERAL POWER COMMISSION

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(Testimony of Will T. Neill.)

Afternoon Session [574]

Q. Now, I would like to go back with you to the time of the first transaction in Pacific history, that is, the acquisition of the properties from American in 1910.

In the first place, there was at that time an intermediary used in the transaction, was there not?

A. As between American——

Q. As between American and Pacific? [577]

A. Yes.

Q. That intermediary, as disclosed by the minutes of July 23, Exhibit 20, was Mr. Weld M. Stevens? A. Weld M. Stevens.

Q. Mr. Stevens was a member of the firm, or an employee of the firm of Simpson, Thatcher & Bartlett, was he not?

A. I don't know.

Mr. Laing: I will concede he was a member of that firm or office.

By Mr. Slaff:

Q. What was the purpose of using an intermediary in this transaction?

A. I really don't know.

Q. As far as you have been able to ascertain, was any useful purpose served by using an intermediary?

A. I did not examine into that at all; as I say, I don't know about that.

Q. You then, I take it, did not go into this

(Testimony of Will T. Neill.)

phase of the original transaction and try to get any further information as to that particular phase?

A. As to the use of the intermediary, no, I did not.

Q. In what state was Pacific Power & Light incorporated? A. State of Maine. [578]

Q. And, of course, it was incorporated or caused to be incorporated by the American?

A. I believe so.

Q. And the purpose of the incorporation of the Pacific was to have a company take over certain properties that had been bought up by American here in the northwest; is that correct? Is that correct, essentially, and to operate those properties?

A. Yes, I think so; and, I think, to assemble the properties and to operate them; they are one and the same thing. I think that is correct. They are part of the same transaction.

Q. Pacific was incorporated, was it not, in July of 1910? A. June 16, 1910.

Q. Now, a few months prior to that time American had caused to be incorporated two other corporations to take over certain properties, which it had acquired here in the northwest; is that correct?

A. Yes, there were two corporations.

Q. And one of those was the Columbia Power & Light Company?

A. Yes, the Columbia Power & Light Company, and the Yakima-Pasco Power Company.

(Testimony of Will T. Neill.)

Q. Now, according to page 40 of your Exhibit 15,— [579]

A. (Interposing) Page 40?

Q. Yes. According to that, the Columbia Power & Light Company was incorporated April 20, 1910 by Mr. E. M. Scanlon and James C. Stapleton?

A. I believe it was April 28.

Q. April 28, 1910? A. Yes.

Q. Under the laws of the State of Washington, with an authorized capital stock of \$3,000,000, 30,000 shares at \$100 each; that is correct, is it not?

A. I believe so, yes.

Q. And Mr. Stapleton was an attorney, was he not, here in Oregon?

Mr. Laing: He lived in Vancouver. He was a practicing attorney at Vancouver, and Mr. Scanlon, I think, was associated with him in his office.

By Mr. Slaff:

Q. When the statement is made that the Columbia Power & Light Company was incorporated by Messrs. Scanlon and Stapleton, that merely sets out the formal incorporators of that company: is that right? A. That is right.

Q. And so, too, when a similar statement is made at page 56 of your exhibit, at the bottom, that the Yakima-Pasco Power Company was incorporated March 31, 1910, by Mr. E. M. [580] Scanlon and James C. Stapleton, under the laws of the State of Washington, with an authorized capital stock of \$3,000,000, divided into 30,000

(Testimony of Will T. Neill.)

shares, par value \$100 each, again you are merely stating the nominal incorporators of that company?

A. That is correct.

Mr. Laing: Mr. Slaff, we are prepared to concede that those two companies were incorporated at the instance of the American Power & Light Company, or, in effect, by it as a temporary gathering place for the properties which they expected to turn over to the Pacific.

By Mr. Slaff:

Q. I take it that you agree with that statement, Mr. Laing has just made?

A. That is my understanding, yes.

Q. When did American come into this territory, or, rather, first start buying property in this territory?

A. I believe their first purchase was the Astoria Electric properties.

Q. About when was that, Mr. Neill?

A. That was either in 1909 or 1910.

Q. Prior to that time the American had owned no properties up here in this neighborhood, had it?

A. I believe not.

Q. Now, after it acquired the properties which ultimately came over to the Pacific, certain of those [581] properties went over to the Columbia Power & Light Company; is that right?

A. Yes; the Columbia Power & Light Company; that is, that corporation for a short time held a certain group of properties; and the Yakima-Pasco, another group. The Astoria Electric

(Testimony of Will T. Neill.)

Company was, of course, an isolated property in the State of Oregon.

Q. And that remained in the corporate organization of the Astoria Electric Company until the properties went over finally to the Pacific?

A. That is right.

Q. And do you have a statement of the cost of these properties to the Pacific? Can you at this time give us the cost of those properties?

A. Yes. Those properties which were acquired by the Pacific from the American cost the Pacific \$10,900,000, as shown in Exhibit 17.

Q. I should like to have you state the cost to the American. I may have called for the cost to the Pacific, but I would like to have you state the cost to the American at this time.

A. The cost to the American is the amount of \$10,900,000, less the amount of \$4,907,248.66, as shown on page 47 of Revised Statement B.

Q. That is, then, a cost to the American of approximately [582] \$6,000,000?

A. Slightly over \$6,000,000, I believe.

Q. At what amount did these properties that were transferred to the Columbia Power & Light Company and to the Yakima-Pasco go on the books of those companies?

A. Of those companies? What do you mean?

Q. What was the plant account of the Columbia and the Yakima-Pasco?

A. I think I will have to look that up.

Q. Surely.

(Testimony of Will T. Neill.)

A. I think that is in Revised Statement B, that it, Exhibit 17. It may take a little time to explain that. So far as it relates to the Columbia Power & Light Company, that is explained, starting on page 16 of the Revised Statement B. I don't believe—I will have to work it out. I don't have that figure before me.

Q. Let me refer you to page 6 of Exhibit 16 for identification, the staffs' Joint Report, and ask you whether you can tell us from that, what is shown in that report, what the total of the plant account of the Yakima-Pasco, the Columbia, and Astoria were just prior to the transfer of these properties to the Pacific?

A. Well, on that page of Exhibit 16 it shows the plant account of the three companies, totaling \$9,001,106.77.

Q. And just for the sake of completeness, that shows [583] the plant account, does it not, of the Astoria Electric Company as——

A. (Interposing) \$653,253.40; Columbia Power & Light Company, \$4,017,179.53; and \$4,330,673.84 for the Yakima-Pasco Power Company.

Q. Making the total of \$9,001,000 mentioned in your last answer; is that correct?

A. That is correct. I have not personally checked those items, and I can't say whether they agree with our Revised Statement B or not; but they are gotten from the same source, and I would expect them to check.

Q. I take it that these figures have been

(Testimony of Will T. Neill.)

checked by the men working under your direction, Mr. Phipps and——

A. (Interposing) Yes. Mr. Phipps has done the detail work; I don't remember the figures myself.

Q. But you certainly have been advised by your people of the figures for the plant account shown on page 6 of the Joint Report, which is marked as Exhibit 16?

A. Yes, I have been advised.

Q. And you have not been advised that those figures are incorrect?

A. No, I have not. [584]

By Mr. Slaff:

Q. In connection with another study which you have been making very recently, and the details of which you turned over to Mr. O'Neil the other day, I notice that you have a statement of total estimated cost to American Company by companies totaling \$5,543,435.00. Do you have that before you, Mr. Neill?

A. Yes, I do.

Q. That is correct, is it not?

A. Yes. That total figure was computed from a statement given to Mr. Flynn with my letter of December 27, 1940. That is a statement which we obtained from the American Power & Light Company at the request of the examiners.

Q. Just a few moments ago you indicated as the cost to American a figure of approximately six million dollars. I wonder if you would be good

(Testimony of Will T. Neill.)

enough to tell what is represented by the difference between \$5,543,000 and a figure of approximately six million, so that the record may be complete on that score. Let me put it this way; perhaps we can proceed a little more rapidly. Was that difference of approximately \$450,000, bond discount?

A. Yes. Of course, that is the item, \$448,616.25.

Q. All right.

A. I am sorry that I overlooked that.

Q. Now, then, so that up to this point, before Pacific [585] gets into the picture, we have a situation of American buying properties at a cost of approximately five and a half million dollars which, plus discount, comes to approximately six million, and those properties getting into the plant account of Columbia Power & Light and Yakima-Pasco, which had been organized by American, and Astoria, which American owns, getting into those plant accounts of those three companies at approximately nine million dollars. Right?

A. That is what those records show, yes. May I say, in connection with that, in working up our original costs, we used as our basis, getting original cost at the time of acquisition, the original costs that were on the books of the predecessor companies to Columbia Power & Light and the others.

Q. Oh, yes.

A. Plus whatever actual net additions, if any, had been made, or additional costs incurred by

(Testimony of Will T. Neill.)

Columbia and the Yakima-Pasco Power Company and Astoria.

Q. Yes. Well, that is something which we will take up subsequently, the difference between original cost to predecessors and cost to American. At this time I am interested in discussing with you the difference between cost to American and amounts which were ultimately recorded on the books of Pacific. Now, the next step in the transaction, then, in getting the properties over to the company to operate [586] them, was the creation of Pacific? Right?

A. That is correct.

Q. And as we have discussed, and as you have testified, in getting those properties over to Pacific from Astoria, Columbia, and Yakima-Pasco, the personal intermediary, Mr. Weld M. Stevens, was used, and when the properties came over to Pacific, at what figure did they appear in the plant account of Pacific?

A. \$10,900,000, including the debt discount and expense.

Q. Now, is the difference between the figure which appeared on the books of Pacific, \$10,900,000, and the cost of these properties to American, a write-up?

A. I don't think so. The Pacific Power & Light Company purchased those properties from American for certain securities which were turned over to the American, and the cost to Pacific was recorded on the Pacific's books of \$10,900,000, as I

(Testimony of Will T. Neill.)

see it, it being the value of those properties at the time, in the judgment of the directors of the Pacific Company.

Q. Now, in the first place, Mr. Neill, a determination of whether a transaction is a write-up, it must be made as of the time of the transaction; is that right? A. I believe so.

Q. Yes. In other words, in determining whether or [587] not this transaction was a write-up, we must look to July, 1910, for that determination. Right?

A. Yes. You must look to 1910, but as I see it, the cost of the properties to Pacific is represented, based on the securities which it paid for the properties. The properties were put on the new corporation's books at the price of \$10,900,000.

Q. Well, now,—

A. (Interposing) There was, of course, the difference between the cost to American and the cost to Pacific.

Q. Now, in the first place, of course, that transaction between American and Pacific was distinctly not an arm's-length transaction; that is right, isn't it?

A. Well, I have testified this morning that the Pacific Board of Directors authorized the purchase of the properties, and it was composed largely of officers or representatives of American and Bond & Share, but as I see it, at the time they recorded that transaction on the Pacific's books,—that is, the directors of Pacific Company, they must have

(Testimony of Will T. Neill.)

recorded what was in their judgment the value of the properties and assets and business which they took over, the cost being recorded on the Pacific books at \$10,900,000.

Q. So when you say, in your answer to the first question in this discussion, that the \$10,900,000 was the value of those properties at that time, in the judgment of the [588] directors of Pacific, shouldn't you better say, in order to represent the facts more accurately, that that represented, or may have represented, the value of those properties at that time, in the judgment of the directors of American?

A. No, I don't think so. The American was disposing of those properties. It didn't have to dispose of them to Pacific, and I think it probably was entitled to dispose of them on terms which were satisfactory to it; while the Pacific directors were officers and employees of American, I still believe their judgment may easily have been independent of their affiliation with American. I mean, in other words, that they were in position to exercise for Pacific Company their own judgment as to the value of these assets.

Q. Mr. Neill, did the directors of Pacific who participated in the meeting of July 23, 1910, have any independent judgment as directors of Pacific in respect to this transaction?

A. Well, I have no reason for assuming that they did not exercise independent judgment on behalf of Pacific in their capacity as directors.

(Testimony of Will T. Neill.)

Q. You had some twenty odd years of experience in the utility field as an operative man, and several years of experience prior to that time in the regulatory field; that is correct, is it not?

A. That is correct, yes. [589]

Q. Now, let me put it this way, then: Do you mean to tell us that the conclusion which was arrived at by the Board of Directors of Pacific at the meeting of July 23, 1910, was the same type of judgment as your present Board of Directors exercises when it is considering a purchase or a sale of property?

A. Well, my reply to that must be that so far as the 1910 transaction is concerned, more than thirty years ago, I don't think I, or anybody today, is in position to know exactly what was in the mind of the Pacific directors when they undertook this transaction. I do believe very firmly that when they set up the transaction on the Pacific books,—that is, when they purchased the properties and set up the cost to Pacific at \$10,900,000, they were exercising their judgment as to what the then present and prospective value of that situation was.

Q. Perhaps I have not made myself entirely clear, Mr. Neill. Let me put it this way to you: In the letter from Mr. Mitchell to Mr. Talbot of July 23rd, here in evidence as Exhibit 22, written, apparently, after the meeting, there is a statement, "While we have elected the foregoing as officers in the West, we have not as yet elected any Western

(Testimony of Will T. Neill.)

directors because we want to keep the full Board here until we get through with all the votes relating to the issuance of bonds, stocks, etc." [590]

Now, Mr. Neill, doesn't that, together with everything else you know about this transaction, indicate to you that at this first meeting of the Board, July 23, 1910, the members of the Board were acting on behalf of American?

A. No, that does not indicate that to me. The letter from Mr. Mitchell to Mr. Talbot indicates to me that, at least, it was desirable not to split the Board between the West Coast and the East Coast while all of these transactions were under way. Otherwise, you'd have your Board separated, and it would be difficult to get it together, and I presume these things were running along rather rapidly at that time, and the Board had to take action on various matters. For a matter of convenience, it was better to have it in New York.

Q. Of course, all the members of the Board were elected by American and were employees or officers of American or Electric Bond & Share Company, or Simpson, Thatcher & Bartlett; is that right?

A. I don't think there were any Simpson, Thatcher & Bartlett men on it.

Q. Well, we can clarify that, but it is of no consequence at the moment. Now, do you mean to tell us, Mr. Neill, that these men met and considered from the point of view of Pacific, rather than from the point of view of American, independently,

(Testimony of Will T. Neill.)

what amount should be established on the books of Pacific for the plant which Pacific was acquiring? [591]

A. Well, as I said before, I have no reason to assume that they didn't act with independent judgment. I can't know, thirty years later, naturally, and I don't think anybody else can, actually what the directors of Pacific had in mind. We do know that they purchased certain properties and gave in payment therefore certain securities, and insofar as Pacific Company is concerned, the cost of those properties to Pacific was the cost as recorded on Pacific books.

Q. Well, did you make any attempt to find out, Mr. Neill, as to what was in the minds of the directors at this first meeting in respect to this matter which we are discussing?

A. No, I did not interview any of those men.

Q. Several of them are still around, are they; that is, in New York, connected with the Bond & Share system?

A. There may be some of them; but as I say, I made no attempt to inquire into that particular thing. As I see it, the cost,—that is, we know what the price they paid for the properties which Pacific purchased at that time was, but, as I say, I have no reason to assume, that it was not set up on the basis of their determination as to the value of the properties, present and prospective, which they purchased.

Q. Well, do you consider it an important mat-

(Testimony of Will T. Neill.)

ter to determine whether or not such amounts as might be set up on the books of a corporation in this connection, are set up as [592] the result of independent judgment of the directors or are they set up as the result of direction from a seller?

A. I don't know how, at this stage, anybody could determine what was in their minds.

Q. Well, let's assume that could be determined. Mr. Neill. Now, will you tell me whether you consider that determination of importance in your reclassification?

A. May I have that question again, please?

Mr. Slaff: Mr. Reporter, will you please read the last preceding question?

(The question referred to was read by the reporter as above recorded.)

A. Well, I think that would be something that one should find out if it can be disclosed, yes.

Q. Well, if it can be disclosed, Mr. Neill, might that not be determinative, or very good evidence, at least, whether or not there was a write-up?

A. Well, I don't know what that would show. As I have said before, we know in this particular case that the cost to Pacific Company is the cost as shown on the books. At the same time, we know that that cost to Pacific on Pacific's books is greater than the cost of the same properties to American, by the amount which we discussed before.

Q. Well, now let's get back, if we may, to the

(Testimony of Will T. Neill.)

question. A determination of whether or not the amount that was [593] recorded on the books in the plant account, the determination of whether that amount was recorded as the result of the exercise of independent judgment by the directors of the accounting company, or whether it was so recorded as the result of the direction of an affiliated seller would be important, would it not, in coming to a conclusion as to whether or not the transaction represents a write-up; isn't that correct?

Mr. Laing: Mr. Slaff, isn't the problem there one of assuming that the words "write-up" have some specific and technical significance? Insofar as we are talking about differences in cost, there is no dispute about the difference in cost; but if we are attributing some special technical significance to the words "write-up", perhaps we can define it first, and Mr. Neill will have an easier time in answering your question.

Mr. Slaff: I assume Mr. Neill knew what a "write-up" was, and I am only referring to the term which was used in the System of Accounts. He had answered that a particular transaction was not a write-up. Now, as I say, we are now discussing the System of Accounts. I assume he was using it in the,—whatever manner he interpreted the use of the term "write-up" in that system of accounts.

A. Well, the use of that term, of course, so

(Testimony of Will T. Neill.)

far as the Pacific books are concerned, there is no write-up on the [594] Pacific books. The property is on Pacific books at its cost to Pacific. Now, as I said before, I am not,—there is an admitted difference between the cost to American and the cost to Pacific for the properties which Pacific purchased. We have disclosed that, of course, in our Revised Statement in Exhibit B in the amount of four million, nine hundred odd thousand dollars.

By Mr. Slaff:

Q. Well, as I understand it, you have come to a conclusion that that amount recorded on the books of Pacific Company is not a write-up, as that term appears in the System of Accounts, and as the result, in your mind, of all the studies and and investigations that you have made. Now, however, I have asked you a question with respect to factors going into the ultimate conclusion of whether or not a particular transaction is a write-up, and I wish you would answer that question, if you will, if there is no objection to the question as such; and if there is an objection, we will wait for a ruling on it. The question I asked you just prior to the statement that Mr. Laing made,—will you be good enough to read that, Mr. Reporter?

(Whereupon the reporter read as follows:)

“Question: Well, now let’s get back, if we may, to the question. A determination of whether or not the amount that was recorded on the books in the plant account, the determination of [595] “whether that amount was recorded as the result of the

(Testimony of Will T. Neill.)

exercise of independent judgment by the directors of the accounting company, or whether it was so recorded as the result of the direction of an affiliated seller would be important, would it not, in coming to a conclusion as to whether or not the transaction represents a write-up; isn't that correct?"

Mr. Laing: Is that the question that you wished read?

Mr. Slaff: Yes.

Mr. Laing: I thought, perhaps, you wanted him to read my objection. The only point that I made was to make clear whether the term "write-up" is being used as we conceive it to be defined in the System of Accounts, or whether we are speaking about a difference in cost. If the term that we are asking Mr. Neill to respond to, which is write-up, as we understand the System of Accounts, if that is it, I guess we have no dispute.

Mr. Slaff: Yes, that is all. That is the only sense in which I was using it. The sense in which the term appears in the system of accounts is what I have reference to. [596]

A. If I remember the question now, the manner in which the determination was made, as I see it, of the value of the properties to be placed on the Pacific books really does not have anything to do with the question as to whether or not the cost to the Pacific Company, as so recorded, over the cost to American was a write-up. That all depends, of

(Testimony of Will T. Neill.)

course, on the definition of "write-up", which is mentioned in the classification of accounts without much of a definition.

Q. Well, how do you determine the meaning of the term "write-up" to be as it appears in the System of Accounts?

A. As I understand the term "write-up" it is an increased value of the assets placed on the books of the company over and above the value of those assets previously recorded on the books, the change being the result of some revaluation process.

Trial Examiner: I think you may have that a little bit confused. The definition that you just gave, that is your own definition of write-up, and not the Commission's?

The Witness: That was given—I was giving my understanding of it.

Trial Examiner: I thought he asked you what was your understanding of the term as contained in the System of Accounts, and not your general understanding of the term?

Mr. Slaff: I think he answered it properly, insofar as the question was concerned. [597]

By Mr. Slaff:

Q. Was your answer to the effect that that was your understanding of the term "writeup" as used in the System of Accounts? That is, that you understood it to mean an increase in the value of the assets previously recorded, as you just testified?

A. That is my understanding of it.

(Testimony of Will T. Neill.)

Q. Then in your view, as you conceive the situation, is it your opinion that there can be no write-up as long as a separate corporation is introduced into the situation?

A. Well, as I understand the term "writeup" it is something which occurs on a particular company's books after an asset has been previously recorded on those books at a certain value. In this particular case, as I see it, as I said before, the cost to the Pacific Power & Light Company is the cost as recorded on the company's books, and we have disclosed that cost exceeded the cost to the American. Now, if we had a pronouncement by some final authority as to what a writeup is, if they ruled that as a writeup, we would have to label it as such; but we don't understand it that way.

Q. I do want to explore with you what your conception is or what you think to be a reasonable interpretation of the term. Now, going back—might we have a recess at this time? I see it is about our normal time.

Trial Examiner: We will have a recess for five minutes. [598]

(Whereupon, a short recess was taken after which proceedings were resumed as follows:)

Trial Examiner: The hearing will be in order.

By Mr. Slaff:

Q. Mr. Neill, going back to the discussion we were having with respect to the determination of the amount at which the properties went over to Pacific in July of 1923 should appear on the books

(Testimony of Will T. Neill.)

of the Pacific,—1910.—July 23, 1910 should appear on the books of the Pacific, isn't it a fact that that was all determined before the Pacific was even organized?

A. Well, I think not. So far as I know, the offer which had been made was considered by the Pacific Board on July 23, whereas the Pacific Company had been organized on June 16, 1910.

Mr. Slaff: Will you read that last answer, Mr. Reporter? I didn't hear the last part of it.

(Thereupon, the last answer of the witness was read aloud by the reporter as above recorded.)

By Mr. Slaff:

Q. Isn't it a fact, Mr. Neill, that prior to June 16, 1910, it had been decided what was to be done by the Pacific in connection with this transaction?

A. I don't know as to that.

Q. Well, I show you a letter dated June 16, 1910— [599] a copy of a letter—addressed to Neil A. Weathers, care of American Power & Light Company, Lewis Building, Portland, Oregon, and signed by Simpson, Thacher and Bartlett, and I will ask you to look that over. (Handing document to witness.)

You have had opportunity to examine the document now, Mr. Neill, on the stand? A. Yes.

Mr. Slaff: I should like to have this document, Mr. Examiner, which is apparently a night letter,—

(Testimony of Will T. Neill.)

dated June 16, 1910, to Neil A. Weathers, care of American Power & Light Company, Lewis Building, Portland, Oregon, and signed by Simpson, Thacher and Bartlett, be given the next exhibit number and received in evidence.

Trial Examiner: It will be marked for identification as Exhibit 32.

(The document referred to was marked Exhibit No. 32 for identification.)

Trial Examiner: Is there any objection?

Mr. Laing: No objection.

Trial Examiner: It will be received.

(Exhibit No. 32 received in evidence.)

Mr. Slaff: I should also like to have this document copied in the record at this point.

Mr. Laing: No objection.

Trial Examiner: So ordered. [600]

(The document referred to, Exhibit 32, is as follows:)

“New York, June 16, 1910

“Neil A. Weathers,
c/o American Power and Light Co.,
Lewis Bldg., Portland, Oregon.

“Papers filed Maine today for organization Pacific Power Light Company. Capitalization six million common; one million and half preferred. Will increase authorized stock later as desired. As soon as company organized propose forward papers for qualification Washington, Oregon, Idaho. Before

(Testimony of Will T. Neill.)

company commences business Washington, and before actual qualification takes place, propose have entire capital stock subscribed by some one representing American Power Light Company. This in order to leave no doubt of compliance provision Washington law relating commencing business before all stock subscribed. Subscription will be made with understanding that company will accept payment of same in property. As far as we see now, intermediaries proposition new company will be as follows: Intermediary will agree transfer property Astoria, also property Yakima Pasco, except contract with Northern Pacific Irrigation Company and Pasco Reclamation Company and any other exclusive feature contracts, also transfer property Columbia Power Light, also capital stock Walla Walla Valley Railway; transfers will be made subject to underlying bonds, the amount of these to be the amount outstanding of record less any acquired by Mitchell. Transfer will take place as of date to be [601] determined either June 1 or July 1, preferably former, purchaser taking all current assets and assuming all current liabilities. Property should be transferred free encumbrances except bonds above stated and current liabilities as of fixed date. Pacific Company will agree issue to intermediary all common stock and one and a quarter millions preferred stock and four million dollars of new five per cent. first and refunding mortgage bonds, less underlying bonds as aforesaid Pacific Company will also agree to assume payment under-

(Testimony of Will T. Neill.)

lying bonds and floating debt. Two hundred fifty thousand preferred stock not to be issued for properties which will be issued from time to time at par for cash. This rough plan may need modification. As noted in previous wire do not understand whether Pacific Company being foreign corporation can undertake business of furnishing water in North Yakima, Pasco and Kennewick. See section 3678 recent Washington revision. Doubt perhaps cleared up by Sec. 9510 if any question exception may have to be made of these properties, but Mitchell strongly objects to such exception for financial reasons. To carry out above plan will require transfers various companies direct Pacific Company and holding meeting various companies to authorize same. If not already done, have necessary papers prepared for holding meetings when required. If any waivers or proxies needed from eastern stockholders wire. Propositions to be made to various companies by intermediary would be to [602] purchase property as of date to be fixed, free encumbrances, except underlying bonds and floating debt in consideration. Assumption by intermediary or his nominee such bonds and indebtedness. After qualification corporation in three states will have deeds of various properties recorded and mortgage new company made. Most important thing at present is agree on fundamental plan for issue securities. Show telegram Talbot, Cotton and other

(Testimony of Will T. Neill.)

persons interested and obtain their suggestion. Wire suggestions promptly.

Simpson, Thacher and Bartlett."

By Mr. Slaff:

Q. Now, Mr. Neill, does this document, Exhibit No. 32 in evidence, indicate to you that the amount at which these companies were to go over to the Pacific had been decided even before Pacific was organized?

A. Not exactly. Of course, this letter is dated June 16, the date of the organization of the Pacific. It is very apparent, as I have already testified, the work of assembling these properties had taken place, at least some of it, prior to the date of organization. I assume from the letter that some—that while the offer of the intermediary had not been accepted, the organizers of the Pacific Company knew, at least with a fair definiteness, what the offer would be.

Q. Didn't they direct what the offer should be?

A. I didn't get that, no. [603]

Q. Well, isn't it a fair statement, Mr. Neill, that the organizers of the Pacific Power & Light Company directed Mr. Stevens, the intermediary, what offer he should make?

A. Oh, I have no knowledge of that, of course.

Q. But as a practical business matter, isn't it a fair statement to make or isn't it a fair assumption, from all the facts?

A. Well, it would be pure speculation on my

(Testimony of Will T. Neill.)

part. I could not assume what was in the minds of persons who were working on the transaction.

Q. Mr. Neill, would it be pure speculation on your part? Is that the way you characterize a conclusion that the organizers of Pacific directed the intermediary what offer to make? Would you characterize such a conclusion as purely speculative?

A. No, I think not.

Q. I mean, such a conclusion would be a fairly reasonable conclusion, would it not?

A. Would you state that again?

Q. The conclusion, from all the facts in this letter and the facts surrounding the transaction, that the organizers of Pacific, to wit, American, directed the intermediary what offer he should make the American for these properties?

A. You mean what offer he should make the Pacific?

Q. Yes. [604] A. I think that is correct.

Q. Sure. Now then, going back to this letter, isn't it a fair conclusion that the basic details had been worked out even before the Pacific was organized?

A. Well, this letter indicates that a considerable amount of headway had been made at the date of organization. Of course, as I said awhile ago, the assembling of these properties and the organization of the Pacific was a part of the same project, they could not occur at the same time.

Q. Now, I am getting over from the point of assembling the properties to the transition or turn-

(Testimony of Will T. Neill.)

ing over of those properties to the Pacific; the properties had been assembled now. Isn't it a fair statement that, after the assembling of the properties, prior to the organization of the Pacific, it had been determined by American at what price these properties were to go over to the Pacific? [605]

A. I think that is the right answer; it had been determined what the offer to the Pacific was going to be.

Q. And it also had been determined, had it not, that the Pacific Company would accept the offer, at the direction of American; isn't that correct?

The Witness: May I have that question?

Mr. Slaff: Surely.

(Thereupon the question was read aloud by the reporter as above recorded.)

A. Well, I think probably I can go along with you on that except "at the direction of American". I mean, the basis of the transaction apparently was pretty definitely defined and, in the course of events, the offer was made to the Pacific, and the Pacific directors accepted it.

Q. And, essentially, the transaction boils down, or boiled down, did it not, into one of American making the offer and American, through Pacific, accepting the offer?

A. Well, as I said before, I don't really know that. The Pacific Board of Directors, which accepted the offer on July 23, were American and Bond & Share employees or officers. I know noth-

(Testimony of Will T. Neill.)

ing about what was in their minds, whether they were directed by American to accept the offer; it is entirely possible, in view of the situation, inasmuch as those men were representing both the American and the Pacific, that the determination had also been made in connection with the [606] possible acceptance of the offer, and that it represented their ideas and judgment as to the value of the property; I mean, supporting their entries on the Pacific books.

Q. Then, again, Mr. Neill, without a speculative thought and just looking at it from your point of view, as a practical business man, isn't it fair summary to say that American made the offer and American advised the Pacific to accept the offer?

A. Well, as I said before, I think the men who were setting up this transaction could very well have, even in their joint identity as directors of the Pacific and employees of American or Bond & Share, made their determinations as to the value of these properties to be turned over to the Pacific, without prejudicing one or the other, or without prejudice as to one or the other. I don't know whether that answers your question or not.

Q. Well, perhaps it does; but what I am trying to do, if I can, is to boil it down to essentials, to the ultimate transaction; and what I am asking you is, wasn't this the situation: American was dealing with American; American was making the offer and the American group was accepting it?

A. The Pacific directors, of course, accepted the

(Testimony of Will T. Neill.)

offer. They were American employees or Bond & Share employees. I tried to explain that a while ago. That, even before acceptance of the offer by Pacific, these men had settled in their [607] own minds what the values of those properties were, and at what amount they should be turned over to the Pacific; that is evident; and that the Pacific would accept the offer.

Q. Well, so, if I state that that transaction, to me, represents nothing more than American dealing with itself, via the interposition of the Pacific, would you say that was unfair or an unreasonable statement?

A. Well, there was a pretty close tie-up.

Q. I am still trying to find out whether you would say that was an unfair conclusion, or whether I am unfair in making such a statement?

A. Well, I can't divorce in my own mind that, so far as the Pacific Company was concerned, while these directors who were employees, also, of American and Bond & Share, when they accepted the proposition they accepted it for Pacific and not for American, because they were representing the Pacific at that time.

Q. I don't want to put any words in your mouth, Mr. Neill, or to ask you to say anything in any fashion which you yourself do not want to state, and that is why I put the question the way I did to you. If I should say that this transaction represents nothing more, essentially, than Ameri-

(Testimony of Will T. Neill.)

can dealing with itself, would you characterize that statement of mine as an unfair statement?

A. As to your opinion? [608]

Q. No, no; as to the opinion of a presumably reasonable person?

A. Well, I think, looking at it from your viewpoint, you could draw that conclusion.

Q. And I take it I could draw that conclusion reasonably: isn't that right? A. I think so.

Mr. Laing: May I have the last question and answer. I didn't hear the question.

Mr. Slaff: Yes. I think you will perhaps want the last two or three questions and answers because the ones just before the last question were tied up with it, or tied up with Mr. Neill's answer.

Mr. Laing: Mr. Reporter, will you read the last question and answer.

(Thereupon the last preceding questions and answers were read aloud by the reporter, as follows: "Question: I don't want to put any words in your mouth, Mr. Neill, or to ask you to say anything in any fashion which you yourself do not want to state, and that is why I put the question the way I did to you. If I should say that this transaction represents nothing more, essentially, than American dealing with itself, would you characterize that statement of mine as an unfair statement? Answer: As to your opinion? Question: No, no; as to the opinion of a presumably reasonable [609] person? Answer: Well, I think, looking at it from your viewpoint, you could draw that

(Testimony of Will T. Neill.)

conclusion. Question: And I take it I could draw that conclusion reasonably; is'nt that right? Answer: I think so.")

By Mr. Slaff:

Q. Suppose, Mr. Neill, that Pacific had been organized not on June 16, 1910, but, say, a year earlier by American, as it ultimately was, and Pacific had, itself, bought from the same vendors all the properties which American did buy, at the same time as when bought by American, and at the same prices; that would, of course, have been a cost to Pacific of some approximately five and one-half millions of dollars, plus a half a million dollars of discount.

A. I am sorry. I got lost in your question.

Q. This question is on the assumption that the Pacific had been organized, say, in 1909, and had itself bought all the properties that the American bought, bought them from the same vendors, and at the same prices that the American had paid.

A. That is, if the Pacific had been organized as a separate corporation?

Q. By the American in 1909, and American had advanced the funds to it necessary to acquire these properties, and Pacific had gone out and acquired the properties from the same vendors, at the same time, and at the same prices at [610] which the American acquired them, the cost then to the Pacific would have been the amount you have stated here as the cost to American, which is approximately \$6,000,000, including discount?

(Testimony of Will T. Neill.)

A. I think, on those assumptions, that is correct.

Q. Now, supposing Pacific had then entered these properties on its books as of July 1, 1910, at a figure of \$10,900,000, in what account, under the Federal Power Commission's System of Accounts, would the difference between \$10,900,000 and the amount paid for those properties be recorded?

A. According to my understanding of the accounts, it would be in 107.

Q. It was quite a common practice, was it not, in the early days of the American Power & Light Company for a new subsidiary of the American Power & Light to set up on its books as the value of its property an amount substantially in excess of the cost of those properties to American Power & Light?

A. Well, I can't say; I don't know as to the general practice.

Q. Who is Mr. H. L. Aller?

A. He is the President of the American Power & Light Company.

Q. I call your attention,—I take it you are familiar, [611] Mr. Neill, to a certain extent at least, with the integration proceedings involving the Electric Bond & Share system before the Securities and Exchange Commission?

A. Just, generally.

Q. I call your attention to the testimony of Mr. Aller contained at page 9,123 of the transcript of testimony in Docket No. 59-12, In the Matter of Electric Bond & Share Company, et al., before the

(Testimony of Will T. Neill.)

Securities and Exchange Commission, the date of the testimony being March 28, 1941, and I will ask you whether it appears that Mr. Aller testified as follows: [612]

"I will agree with you, however, that it was quite a common practice for a new subsidiary of the American Power & Light Company to set up on its books as the value of its properties an amount in excess of the cost of those properties to the American Power & Light Company."

Mr. Laing: Mr. Examiner, I object to this as wholly irrelevant and immaterial to this proceeding. The question at issue, if there is one here with respect to this particular company, is whether and to what extent there was an excess to the Pacific over the cost to the American, and we are not concerned here with any other matter; we are going quite far afield by going into a transaction between the American Power & Light and other subsidiaries not involved in this proceeding.

Mr. Slaff: I think there has been testimony by Mr. Neill himself that a determination of whether or not the amount recorded on the books of the Company was the result of independent judgment of the Directors of the accounting utility or whether it was the result of direction by a controlling affiliate, and I think that would be important or would be evident in the determination of whether a particular transaction might reasonably be interpreted as a writeup; and I think this particular

(Testimony of Will T. Neill.)

testimony, which I don't want to pursue—this particular thing—but I think it is proper testimony and is of relevance in gauging and judging the transaction in July, 1910, between American and Pacific. [613]

Mr. Goldberg: 1910.

Mr. Laing: Well, there is no dispute between us, Mr. Examiner, with regard to the fact of whether or not there was a difference in the amount between the cost to American and the cost that was recorded on the Pacific books. That fact we very frankly concede. If we get into discussions of what other people did, we are going beyond the scope of this proceeding.

Mr. Slaff: It is not what other people did; it is what the American did.

Mr. Laing: Well, what they did in other instances, if you wish to put it that way.

Mr. Slaff: Surely; what the American did in other instances, I think, is relevant, along that line.

Trial Examiner: Is it your purpose to develop, to some extent, the practices of the American Power & Light Company?

Mr. Slaff: To that particular extent to which I have called Mr. Neill's attention in this excerpt of Mr. Aller's testimony.

Trial Examiner: That objection, Mr. Laing, goes to the relevancy? Is that the basis of your objection?

Mr. Laing: Relevancy and materiality in this proceeding, yes.

(Testimony of Will T. Neill.)

Trial Examiner: The objection is overruled. What is [614] the question?

Mr. Slaff: Just whether it appears that Mr. Aller did so testify; that is the only question that is before the witness.

Mr. Laing: Are you asking Mr. Neill to verify the transcript of the testimony in some other proceeding, by some other witness?

Mr. Slaff: No; I will state that that is the transcript of testimony which we received from the Securities and Exchange Commission. Has there been a ruling?

Trial Examiner: You have no further objection other than the one you previously made, Mr. Laing?

Mr. Laing: I personally think, aside from being irrelevant and immaterial in this proceeding, it is absolutely improper, through any reasonable stretch of the imagination, to ask Mr. Neill what Mr. Aller testified to in some other proceeding.

Mr. Slaff: All right. I will let it go for the moment.

Trial Examiner: I am inclined to agree with that.

By Mr. Slaff:

Q. Mr. Neill, I will call your attention to this document (indicating) and ask you what it is?

A. This is a report to the stockholders of the American Power & Light Company, dated July 23, 1941, [615] apparently signed by H. L. Aller, President, by order of the Board of Directors.

Q. We are getting closer to the present date. I

(Testimony of Will T. Neill.)

want to call this to the attention of Mr. Foley, and ask him whether there is any question as to the authenticity of this particular document (handing document to Mr. Foley).

Mr. Foley: You must have gotten it out of the files of the American Power & Light Company.

Mr. Slaff: I think they sent it to us.

Mr. Foley: If it was gotten from the files of the American Power & Light Company, I don't object to it on the ground of its authenticity.

Mr. Slaff: I would like to ask Mr. Laing whether he recognizes that as an authentic document.

Mr. Laing: I have no question about its being authentic.

By Mr. Slaff:

Q. Now, Mr. Neill, I ask you whether or not, in that report signed by Mr. Aller, and sent to the stockholders of the American Power & Light Company, the following is stated:

"The amounts placed on the books of certain of American Power & Light Company subsidiaries as representing the values of the plants acquired at the time of acquisition by these subsidiaries were substantially greater than the cost to the American of the individual properties acquired."

Mr. Laing: I object to the question. I am not [616] objecting to the competency of the evidence that such a statement was made, but to the materiality or relevancy in this proceeding, for the

(Testimony of Will T. Neill.)

simple reason, in this proceeding, it is admitted that there was a greater cost to the Pacific in the 1910 transaction than the cost to American. It seems to me that is all we are concerned with in this proceeding, so far as the American Power & Light Company is concerned.

Trial Examiner: There being no objection to the document from which Mr. Neill has been asked to read, or which he has been asked to verify as to content in the document; that is, as to whether or not it appears in the document; and, for the purpose as stated by Mr. Slaff at the time the other offer was made, the Examiner is inclined to overrule the objection. [617]

Mr. Foley: This is probably an appropriate time to request that when objections made by Mr. Laing on behalf of Pacific Power & Light Company apply likewise to the American Power & Light Company, unless we indicate to the contrary; that we have the same exception that he has. I think it will save a lot of time.

Trial Examiner: In other words, it will be understood that you join in the objection, Mr. Foley, as representing the American Power & Light?

Mr. Slaff: Sure; that is all right.

Mr. Foley: Unless we indicate to the contrary.

Trial Examiner: Yes, it will be so understood.

By Mr. Slaff:

Q. Does the statement appear, as I read it in that letter to the stockholders, sent by Mr. Aller, who was president, by order of the Board of Direc-

(Testimony of Will T. Neill.)

tors of American Power & Light Company on July 23, 1941? A. It does.

Q. Now, in connection with your conclusion, as you have stated it here, as to whether or not the particular transaction at the opening of Pacific's books constituted a write-up or not, as you understand the term in the System of Accounts, I should like to discuss with you some statements which may serve as a point from which our discussion can be oriented. I want to call your attention to the following [618] statement, which is made in the appendix to the report of the Committee on Corporate Finance of the National Association of Railroad Utility Commissioners for the year 1940, the appendix being a discussion entitled, "Financing the Utility Property Account, by Judge Healy, of the Securities and Exchange Commission," I want to call your attention to the statement made at page 7 of that appendix, and I would like to know, first, whether you agree with that particular statement which is stated there:

"In its simplest and boldest form, a write-up consists of marking up the figures at which assets are carried on books of account to higher figures."

I take it you agree with that, because I understand that to be the essence of your interpretation; is that right? A. I believe that is right.

Q. Now, the Judge's statement there continues as follows:

"But the same result may be, and has been, obtained in a more subtle manner. This was par-

(Testimony of Will T. Neill.)

ticularly so where holding companies were concerned. Often a write-up is created by causing one company to convey its assets to another company at a price in excess of the figure at which they were bought by the selling company, both companies at the time of the transfer being subject to common control."

Now, with respect to that statement, would you view that [619] transaction,—that type of transaction, as essentially the accomplishment of the same result as what you call a write-up, but in a more subtle manner?

A. Would you mind reading it again for me?

Q. Surely. I think I have another copy here, Mr. Neill, and perhaps you,——

A. (Interposing) I have never seen it.

(Counsel handed a paper to the witness.)

A. (Resumed) Well, I think, as I said some while back in my testimony, the whole thing gets back to the question of the definition of a write-up. As I have understood it, the first quotation which you read, and which I agreed to, covers my idea of a write-up. It is obvious, and we have shown that in our particular case, there was a substantial difference between what we considered to be cost to Pacific and the cost to American. It is set up in bold type in our exhibits. The question settles down to one of opinion as to whether this write-up should go into 107 Account or whether it should stay, as we have put it, in 100.5.

Q. And, of course, what I am interested in getting

(Testimony of Will T. Neill.)

here into the record is your opinion as to the ultimate conclusion and as to the factors which go in to make up your ultimate conclusion, and that is why I have asked you whether it is not a fact, as pointed out in this last quotation from Judge Healy that I read you, that the same result that is ob- [620] tained under the circumstances that you call write-up, may be, and often have been, obtained in a somewhat more subtle manner; namely, the interposition of another corporate entity?

A. Well, I do not seem to be able to get away from my simple definition of a write-up, and in this particular case the question is as to whether this difference between cost to Pacific and cost to American should be defined as a write-up and put in Account 107, or, as an Acquisition Adjustment, in 100.5.

Q. Well, let me put it in terms of Pacific itself. You have testified that if Pacific had gone out and bought these properties at exactly the same prices; that the Pacific had been organized by American and had gone out and bought the properties at exactly the same prices that American paid and the same vendors and at the same time, and then in July of 1910 had recorded those properties on its books at a figure of \$10,900,000, that would plainly be a write-up as far as you are concerned; right?

A. Yes, that would go into 107. I think the situation,—I think that in the situation as it occurred, my opinion is that this difference between Pacific and American cost should go into 100.5, because it is the difference between the cost to Pacific,—part

(Testimony of Will T. Neill.)

of the difference between the cost to Pacific and original cost.

Q. Surely. [621]

A. Now, the only question is one of ultimate determination by, perhaps through litigation, eventually as to where it would go; whether it should go into 107 or 100.5. There is no question, as I understand it, about the fact that there was a difference between cost to Pacific and cost to American.

Q. All right. Now, if such a transaction as I have described in this last question, which contained those assumptions, if that transaction would be a write-up, in your judgment, would you tell us what essential difference, what difference of substance there is between that transaction and the transaction which did occur at the inception of the Pacific's history?

A. Well, I think in cases of this kind, whether we call it write-up or by some other term, as I see it, the recorded cost to Pacific, and I still think it represented what the directors at the time had in mind as to the value of the property as to their judgment of the value of the property—

Q. Well, let's assume in the first hypothesis that I gave you, the Pacific had been organized in 1909 and had gone out and bought the properties at the prices that American bought it for; suppose having done that, the Board of Directors of Pacific then met on July 23, 1910, and decided that the value of the property which they had bought as at [622] July 1, 1910, was \$10,900,000, and they proceed

(Testimony of Will T. Neill.)

to record that amount on their books in their plant account, would you call that a write-up?

A. That was when they bought the property direct?

Q. Yes.

A. Yes, that would be my understanding of a write-up.

Q. Yes; so that the factor of the exercise of judgment by the directors as to value of the property at a given time, that is not the determining factor of whether or not you consider a transaction to be a write-up? A. Will you state it——

Q. (Interposing) If it is not clear to you when it is read, I will be glad to—Mr. Reporter, will you read the question, please?

(The last question was read aloud by the reporter as above recorded.)

A. Well as I say, there are two different situations; one the write-up which we have discussed would be a write-up on Pacific's books, an asset already recorded,—recorded on Pacific's books at an increase to a higher value, that, I say, is a write-up, according to my understanding of a write-up. The Pacific transaction, the one we are discussing, fundamentally, is one on which the increase in the value of the asset—that is, the value of the asset had never before been placed on Pacific's books, and it was put on there as a new entry. As I see it, that is the value based on the judgment of the Directors.

(Testimony of Will T. Neill.)

Q. Well,— A. I think that is all.

Q. Well, it is this last factor of value determined by the Board of Directors that I am trying to either eliminate from the determination of whether or not a transaction is a writeup, or included, as you see fit; but I understood you to say that the factor of valuation by the Board of Directors, that is not the factor which determines whether or not a transaction is a writeup; is that correct? In other words, in your situation where the—the assumed situation where Pacific have bought these properties themselves originally from the vendors, and then the Directors, in the exercise of their very best judgment, in July, 1910, independently, and all that, had revalued the property upward and recorded that revaluation on their books; that would be a writeup as you see it? A. Yes.

Q. So that the factor of the exercise of judgment as to valuation of the property by the Directors in the actual transaction that did occur, even if they did exercise such judgment, that factor is not of consequence in the determination of whether or not this was a writeup, in your view; is that correct?

A. Well, I don't know whether I have made myself plain or not in distinguishing between the hypothetical [624] situation and the one which actually occurred.

Q. Well, let me put it this way, if I may, Mr. Neill: What are the differences which, in your judgment, distinguish one transaction from the other

(Testimony of Will T. Neill.)

that would cause you to call one a writeup where you don't call the other one a writeup?

A. Well, as I see it, it is just a question, in one case, the hypothetical case, the increase in asset value as placed on its own books by a hypothetical Pacific Company after it had been originally recorded there at the lower value; in the other case, the original entry of \$10,900,000 was made on the Pacific books and, as far as I can see, represented cost to Pacific.

Q. Now, is there, in your judgment, any difference of substance in those two transactions?

A. That is between the hypothetical case where the Directors make the writeup, after having purchased the property after they have recorded their asset value, and at one time later they decided, perhaps, that their judgment was bad, and that the asset had a greater value, so they increase the value on their books?

Q. Yes.

A. I think, in substance, it is a similar situation.

Q. Now, so that if the first situation—the hypothetical situation—which we have been discussing, is conceded to be a write-up, we can say that essentially the [625] same result is achieved and essentially the same transaction is carried through by the type of transaction which actually occurred and which we are discussing—the fundamental transaction which we are discussing?

A. Well, the result was the same.

(Testimony of Will T. Neill.)

Q. And the transaction, in substance, is the same, is it not?

A. Well, as I see it, in both cases there is a recognition of what in the judgment of the Directors in both cases is asset value. They came out in the end in both of books the same with \$10,900,000. The writeup in the hypothetical case having been placed upon the books of Pacific Company in the hypothetical circumstances by Pacific; in the other case the cost to Pacific first recorded on Pacific books containing allowance for the same value.

Q. So that it is a fair statement, is it not, that the substance of the two transactions that we are discussing is the same?

A. Well, the result is exactly the same. It seems to me——

Q. (Interposing) I think perhaps we are in agreement. *They* are just two ways of doing the same thing; right?

A. I was going to say that the question is simply one, after the facts are all laid out, whether this excess of Pacific's recorded cost over cost to American should be in [626] Account 107. or in Account 100.5.

Q. Sure. That is the ultimate determination to be made, and in order to assist in the determination——

A. (interposing) I think it should go in 100.5. Of course, there is where the difference of opinion comes in that we are discussing today.

(Testimony of Will T. Neill.)

Q. Certainly. And as I say, in order to assist in an ultimate conclusion, I want to get your view into the record as fully as it is deemed necessary in this particular case as to the two types of transactions. And if I may repeat, then, those two transactions are just different ways of accomplishing the same result; right?

A. They come out with the same end result, yes.

Q. Surely. Then, that statement that I read to you some time ago of Judge Healy that the same result, may be and has been attained in a more subtle manner, and so on. That statement is essentially a correct statement, is it not, in your judgment?

A. Well, I think we all agreed, of course, that the result is just the same; but I might not agree with the Judge's wording here.

Q. Yes. I can see where you might take exception, particularly, where he says "often a writeup was created" in your interpretation of that; but essentially what he says there—— [627]

A. (interposing) I think you will come out in the same end result in either of the hypothetical cases, or the case which we have been discussing, for instance.

Q. Yes. Now, then, I want to call your attention—I don't think we need concern ourselves with the rest of that paragraph, although there is some awfully good language in there—I want to call your attention to the following paragraph, which reads as follows; or a part which reads as follows:

"The writeup——"

(Testimony of Will T. Neill.)

A. (interposing) May I have the page, please?

Q. Yes. It is at the bottom of the next full paragraph, Mr. Neill.

“The writeups were then used to balance or create contra-credits to surplus accounts, against which dividends could be charged or against which items could be charged that should have been charged elsewhere, or to balance the issue of securities, either to public or to holding company, which then proceeded to issue and sell to the public those securities against that.”

Now, using “writeup” in the sense in which the Judge used it in that preceding paragraph there, and which we have discussed, is that a fair statement of what was done in the utility industry in the past?

A. I don't think I can answer that.

Q. Now, take the case—— [628]

A. (interposing) It is my——

Q. Excuse me. Go ahead.

A. I spoke this morning of the fact that I am not a professional accountant; it is only so far in accounting that I can go.

Q. Well, take—had you finished your answer?

A. No. I think, before answering that question, it would take me a considerable amount of time to study the thinking of the Judge because, as I say, I am not grounded in the fundamental principles of accounting.

Q. Well, let's confine ourselves, then, to a particular transaction that took place at the instruc-

(Testimony of Will T. Neill.)

tion of the Pacific; and using the term "writeup" in the sense in which the Judge used it there, it is a fact that that writeup, or whatever you choose to call it, was used to balance the issue of securities to the holding company; isn't that so?

A. Yes, the securities and the valuation of the property that belonged to the Pacific books and other assets and liabilities. Of course, those had to balance up; I can see that. [629]

Q. So, at least, in that statement, we had summarized by Judge Healy the transaction, or the nub of the transaction, that occurred with respect to issuance of securities, at the very inception of the Pacific; right?

A. If the simple interpretation of that paragraph is as stated in our last question and answer, I would agree with you as to the balancing of the securities against property accounts.

Q. Might I have that read, Mr. Reporter? Will you go back, please, Mr. Reporter, to my previous question?

(Whereupon, the reporter read as follows: "Question: Well, let's confine ourselves, then, to a particular transaction that took place at the instruction of the Pacific; and using the term "writeup" in the sense in which the Judge used it there, it is a fact that that write-up, or whatever you choose to call it, was used to balance the issue of securities to the holding company; isn't that so? Answer: Yes. the securities and the valuation of the property

(Testimony of Will T. Neill.)

that belonged to the Pacific books on other assets and liabilities. Of course, those had to balance up; I can see that. Question: So, at least, in that statement, we had summarized by Judge Healy the transaction, or the nub of the transaction, that occurred with respect to issuance of securities, at the very inception of the Pacific; right? Answer: If the simple interpretation of that paragraph is [630] "as stated in our last question and answer, I would agree with you as to the balancing of securities against property accounts.")

By Mr. Slaff:

Q. I am not entirely clear, Mr. Neill, by what you mean by your last answer with the qualification that you have attached to it.

A. I was not attempting to qualify the thing. Maybe we had better have it read again and listen to it again.

(Whereupon the reporter read as follows: "Answer: If the simple interpretation of that paragraph is as stated in our last question and answer, I would agree with you as to the balancing of the securities against property accounts.")

A. I am inclined to agree with you,—I though I could agree with you,—that when they set up these values on their books and issued the securities for them with other assets and liabilities, they have to balance up.

Q. Sure. And in that Exhibit No. 32, which we put into evidence this afternoon, being the night letter from Simpson, Thacher & Bartlett to Mr.

(Testimony of Will T. Neill.)

Weathers, it is apparent, is it not, that the capitalization and the securities to be issued by Pacific had been decided by American at the creation, or prior to the creation, of Pacific?

A. Well, I think I agreed that they had been brought to a pretty definite conclusion by the time the Pacific was [631] organized, as to the various factors involved in the situation.

Q. Just one other thing which I would like to discuss with you again,—it hurts me to pass up several of these very nice portions of this, but we want to get along. Towards the end of the appendix there,—I don't know whether you have to go through it, Mr. Neill. I will give you the page. There is a statement,—this statement:

“Proper accounting is an indispensable adjunct to a sensible system of financing, just as poor accounting in the past has been an indispensable colleague of reckless financing.”

I take it you would agree with that generalization on the importance of proper accounting and utility financing, would you not?

A. Well, I would agree that proper accounting is very desirable. The rest of the statement is an opinion. Of course, I would disagree very heartily as to its implication.

Q. Well, I don't want to read any implications into this statement, or into any agreement of yours with it. Let's take the first part of it.

“Proper accounting is an indispensable adjunct to a sensible system of financing.”

(Testimony of Will T. Neill.)

Is there anything you find to—— [632]

A. (Interposing) That is what I was agreeing with you on.

Q. All right. Now, then, let's take the latter part of the sentence:

“Just as poor accounting in the past has been an indispensable colleague to reckless financing.”

Isn't that——

A. (Interposing) No, I could not go on that.

Q. Do you mean they were able to get along; that they were able,—those who did go in for reckless financing were able to go in for it with good accounting?

A. No, I didn't mean to say that. I think that is just the expression of opinion, which I don't know whether it is justified or not. I would make no expression of my own opinion concerning that last part of the statement. The first part of it regarding proper accounting is all right.

Mr. Laing: I take it, Mr. Neill, you think there are lots of things besides poor bookkeeping that are responsible for reckless financing?

The Witness: Oh, yes.

By Mr. Slaff:

Q. I am sure of that, but would it have been possible, Mr. Neill, to indulge in the reckless financing that was indulged in in those cases where it did exist in the past in [633] the utility industry, without poor accounting?

A. Well, I do not think I am able to express an opinion on that myself.

(Testimony of Will T. Neill.)

Q. Well, what interests me is the way you express an opinion for Mr. Laing right off like that on the same subject; but you can't express one for me. Let me put it again. Without going into the industry or the history of the industry, particularly, we know that in the past there have been instances of reckless financing; isn't that so?

A. Speaking generally, yes.

Q. Yes. And wouldn't you agree that it would be pretty difficult to carry that out if the accounting,—if the books of the companies involved and the financial and the balance sheets and the statements,—the financial statements, for instance, had been characterized by good, sound accounting?

A. Well, the reason I am hesitating is I was trying to get the connection with the accounting with the instances of reckless financing. Of course, reckless financing, I suppose, in those cases where there was such, is set up on the books.

Q. They were what purported to be balance sheets and what purported to be income statements to support the financing; right?

A. It might have been good accounting as far as purely [634] technical accounts is concerned, but not showing enough of the actual facts; that is what I have in mind.

Q. Surely.

A. Well, I think I can go with you on that. [635]

Mr. Laing: Mr. Slaff, Mr. Neill and I got some information you asked to check on last night.

(Testimony of Will T. Neill.)

Mr. Staff: Yes, if you will be good enough, Mr. Laing. Whereupon,

WILL T. NEILL

called as a witness on behalf of the Pacific Power & Light Company, having been previously sworn, resumed the stand and testified further as follows:

Further Direct Examination

By Mr. Laing:

Q. Mr. Neill, in the transcript at page 564, reference was made to Mr. Farrar's connection with the Electric Bond and Share Company in 1926. Did you find out anything [637] further about Mr. Farrar, Mr. Neill?

A. Yes. Mr. Farrar has never been an officer or director of Pacific. For many years he was an important officer of Electric Bond & Share Company in connection with the marketing by that company of bonds and other securities with the affiliated holding and operating companies.

Q. You were asked, I think, at page 556, whether Mr. Groesbeck was President of American in 1924.

A. We found an old directory and determined that Mr. Groesbeck was President of American Power & Light Company in 1924. The probability is that he assumed that position on or shortly after Mr. Sykes resignation as president, referred to in Mr. Groesbeck's letter to Mr. Talbot on June 4, 1924. Mr. Groesbeck, of course, was also an officer of Electric Bond & Share.

(Testimony of Will T. Neill.)

Q. And you were asked about the relationship of Mr. Grenier to these various companies.

A. Mr. Grenier was an operating vice-president of Pacific Power & Light Company from January 16, 1911, until some time in 1912, at which time he left Portland and joined the Bond & Share organization. He continued nominally as vice-president of Pacific thereafter until April 13, 1933, which, I believe, was the date of his death. He also served as a director in 1911 and 1912, and again from 1917 to 1933. An old directory indicates that Mr. Grenier was also vice- [638] president of the American Company in December of 1924, which indicates that he held such office while serving as a director of Pacific, and possibly also while a member of the Executive Committee of the Pacific Board, his election to which, on January 14, 1932, is referred to at page 545 of the transcript.

Q. You were asked, but I haven't the transcript reference, Mr. Neill, who were the present members of the Executive Committee of the Board of Directors of the Pacific Company.

A. We checked the records, and it appears that there has been no Executive Committee of the Board of Directors since November 9, 1933. The idea of the Executive Committee originally was to have a committee with limited authority to function when necessary in behalf of the Board on occasions between regular quarterly meetings, or when it might not be feasible to call a special meeting of the

(Testimony of Will T. Neill.)

Board. After Mr. McKee became President in 1933, and at his suggestion, the meetings of the Board have been held monthly, and the Executive Committee has been dispensed with.

If an examination is made of the records of the Pacific Company prior to 1933, I believe it will be found that all important matters, including such things as financing, acquisitions of property, etc., were passed upon directly by the Board in the first instance rather than by the Executive Com- [639] mittee.

Q. You were also asked, Mr. Neill, when Mr. Talbot first became president of the Pacific Company. Have you checked the records to see about that?

A. Yes. It appears, from checking the records, that the first president of Pacific was a resident of Augusta, Maine, who held office for two days, on June 15th and 16th, 1910, Mr. E. M. Leavitt; that the next president was Mr. E. W. Hill, of the Bond & Share organization, who was president from June 16, 1910 to August 20, 1910, and that Guy W. Talbot was elected president on August 20, 1910, and he held office until February 25, 1933.

Q. Now, I asked you about Mr. Groesbeck, did I not? A. Yes.

Q. And Mr. Grenier? A. Yes.

Q. You were asked, in the transcript at page 565, whether Mr. Hatch had anything to do with the Pacific refinancing.

A. We checked on that and find that Mr. Hatch

(Testimony of Will T. Neill.)

had nothing whatever to do with the Pacific refinancing. He did act, however, as an intermediary on the acquisitions of certain properties by Inland Company in 1925 and 1928.

Q. You were also asked whether any intermediary was employed in the 1930 Pacific refinancing, Mr. Neill. [640]

A. The record shows that, with respect to the 1930 transaction, it was carried on directly between American and Pacific, as set forth in the minutes of the Pacific Director's meeting on July 29, 1930, which is Exhibit 21.

Q. Now, at page 566 of the transcript, you were asked whether Mr. Silliman's hope of losing the discount and premiums through an intermediary was realized. What have you to say as to that?

A. In the testimony yesterday, attention,—not in the testimony yesterday,—strike that, Mr. Reporter. Attention has been called to the fact that no intermediary was used in the 1930 transaction, and as the 5% bonds were not called, but were retired at par on August 1, 1930, no premium on calling the bonds was involved. The record shows that the bond discount on the 1930 bonds was not separately taken up on Pacific's books prior to the reclassification statements, nor was the debt discount of four hundred eighty-eight thousand odd dollars on the 1910 bonds taken up on Pacific's books prior to the reclassification.

Q. With reference to page 567 of the transcript, Mr. Neill, to a wire from Mr. Silliman to Mr. Talbot,

(Testimony of Will T. Neill.)

dated December 21, 1937, concerning tentative re-financing plan referred to in that wire, suggesting that the Pacific call a Board meeting for the purpose of considering it; have you checked to see whether anything was done in connection with [641] that?

A. Yes. We checked that, and the record shows no financing was carried out pursuant to the suggestion contained in that wire, and no refinancing occurred until August 1, 1930, when the 5% bonds matured.

Mr. Laing: I think that was all that we have listed that we were asked to do.

Cross Examination (Resumed)

By Mr. Slaff:

Q. You mean by 1930, in response to your previous questions by Mr. Laing, the technique had so advanced that it was not necessary to employ an intermediary in the refinancing in order to lose the bond discount. At least, that is what it would amount to?

A. We checked the record and found that there was no intermediary in the 1930 transaction. That was a direct transaction between American and Pacific.

Q. And another way of putting the result of that transaction is that the approximately a million and a half bond discount suffered in that transaction was lost in Pacific's plant?

A. It wasn't taken up as bond discount on Pa-

(Testimony of Will T. Neill.)

cific's plant account, as such. It was in the plant account, and in the reclassification, we set it up separately.

Q. Surely. The 1930 bond discount went into the plant account [642] rather than being taken up as bond discount, and in the reclassification, you have set it up properly; right? [643]

A. I think my answer to the previous question covered that.

Q. I think so. Thank you.

Turning now to your Revised Statement G, Exhibit 17, wherein is shown the comparative balance sheets as of January 1, 1937, before and after making the adjusting entries as required by the System of Accounts, as you interpreted it; is my statement correct? A. That is correct.

Q. Now, on the balance sheet you show a total utility plant value of some \$28,768,000-odd?

A. After adjustment.

Q. And other physical property in the sum of \$2,468,000; is that correct?

A. That is right.

Q. Making a total of \$31,236,000?

A. Approximately \$31,236,000.

Q. And you show a reserve for property retirement, after adjustment, of \$2,654,000; is that right? A. That is right.

Q. Making thus a net book cost of your total utility plant and other physical property of some \$28,580,000-odd?

A. That is fixed capital, less reserve.

(Testimony of Will T. Neill.)

Q. Yes. Now, assume, Mr. Neill, that the property of the Pacific Power & Light Company had been valued by a [644] competent engineer as of December 31, 1940, who had arrived at reproduction cost of that property in the sum of \$37,450,000, as going value of that property the sum of \$3,000,000, and the depreciation in the property, \$5,700,000; making a net total of \$37,450,000; and assuming that the Board of Directors had, in meeting, come to the conclusion that that represented a fair value; and let us assume that no net additions had been made to your property between January 1, 1937 and January 1, 1941, so that we could use the figures; would you approve, under those circumstances, an entry in your Plant Account to show as the net property value in the sum of \$37,450,000 as of January 1, 1941?

A. No; I think, in that situation, the cost to the utility should be shown on the books as it is today.

Q. That, you would consider a writeup on the Company's books that you could not approve, would you not?

A. I don't think I would approve that particular kind of revaluation; that is, so far as the books of account go.

Q. Yes. We are confining ourselves to the books of account.

A. The assets today are presumably worth the \$37,450,000, less the depreciation, but the books of account show, as they should, the cost to the Pacific Company.

(Testimony of Will T. Neill.)

Q. Now, would you approve the creation of a company, if you were asked to, by the American Power & Light Company, [645] known as Pacific Power & Light No. 2, which was to take over all the property of the Pacific Power & Light Company, assume its stock, issue the same amount of preferred stock that is now outstanding in exchange for the present Pacific preferred, and issue common stock at a stated value of some \$6,000,000 more than the stated value of the present Pacific stock, and the entry into the Plant Account of Pacific No. 2 of the properties which it takes over at a net figure of the sum of \$34,750,000?

A. May I have that question read; that is rather a long question.

Q. Surely.

(Thereupon the last preceding question, referred to, was read aloud by the reporter as above recorded.)

A. Well, that is coming into something that I don't know very much about. About all I can say about that is that is hypothetical as to the present situation. As I say, I am not a professional accountant, but, as I understand, the cost to the utility is the amount that should be recorded on its books. There are undoubtedly occasions when a new company might be formed to take over valuable assets, properly so, at values in excess of what they might have been recorded on somebody else's books, where the values of those assets are

(Testimony of Will T. Neill.)

stable and well-founded. I don't know whether that is done, generally, but it seems to me that it might be done— [646] not referring to this particular situation.

Q. Well, confining ourselves to the present situation. Of course, it is a hypothetical situation, but I put the hypothetical question to you in order to get your reaction as to what you think should properly be done.

A. Well, as I said, I am not an accountant, and it is a little beyond my scope.

Q. I realize that, but they tell me you are a pretty good operating man, and I am trying to get your opinion, as an operating man who has properties, who feels a duty to the security holder and to the public, and it is from that point of view that I put that question to you.

A. As you say, I would not say I am a good operating man, but my forte is operating not financing, and I don't know anything about financing. I couldn't very well speculate on such situations such as you have outlined. [647]

Q. Of course, you are a member of the Board of the Pacific Power & Light Company?

A. Yes.

Q. And while you might not be a specialist in financing, financing problems come up before the Board?

A. Oh, yes; there have been no major ones since I have been a member of the Board.

(Testimony of Will T. Neill.)

Q. There are problems of financing to keep it running on a good, solvent basis, and those problems are not entirely removed from your ken, are they?

A. Well, situations such as you stated in your question are beyond my knowledge.

Q. You are familiar with the proposed Pacific-Inland merger? A. Yes.

Q. And you testified about it before the Federal Power Commission? A. Yes.

Q. That involves problems of consolidation and merger and various financial problems attendant thereon?

A. Well, the phase of the matter that I handled, or the phases of the matter that I handled were not on the financing end of it.

Q. But what I mean is, you are pretty well familiar with the problems involved there? [648]

A. Oh, yes; but, as I say, I am not at all familiar with, nor do I have an intimate knowledge of the broader aspects of public utility financing; that is, I do not have sufficient knowledge to do any more than speculate, which, of course, I don't want to do.

Q. I certainly don't want you to speculate, but, nevertheless, I want the opinion of a witness who has been produced by the company in this respect put on as accurately, without indulging in speculation, as it can be put on. Now, you told us, right off, with respect to the first situation I put to you, namely, the writing up of the plant account of the

(Testimony of Will T. Neill.)

present Pacific, and that you would not approve of it.

A. I don't know that I know all the aspects of such a situation, but that would be my present opinion, that the account should remain on the Company's books stated as it is on the Company's books today; that is, without regard to the total value of the assets which is today worth considerably more than is shown on the Company's books.

Q. Let us assume that all other factors remain the same, but it is suggested to you by American Power & Light Company that this Pacific No. 2 should be created and, as I have said, all the properties of Pacific No. 1 taken over, its bonds assumed, preferred issued in the same amount, common stock issued at a stated value of six million dollars more, and the properties taken into the plant account of [649] Pacific No. 2 at a net amount of six million dollars more than the present net amount on the books of the Company.—

Mr. Foley: (Interposing) You are not suggesting, Mr. Slaff, that the situation is the same today?

Mr. Slaff: What do you mean, Mr. Foley? I am sorry, I don't follow you.

Mr. Foley: You said you are assuming that Company No. 2 would take over the properties of Pacific No. 1, with all factors remaining the same; you are not relating it to the actual situation that exists today in this present territory?

Mr. Slaff: It doesn't make any difference for the purposes of my question.

(Testimony of Will T. Neill.)

Mr. Foley: It is just a hypothetical question?

Mr. Slaff: Certainly. It is a hypothetical question. I don't want to bring up any extraneous factors. Certainly, if Mr. Neill or counsel want to bring in other factors, they may do so, but that is irrelevant for the purposes of my question. I simply want to know whether the witness would approve of such an entry. I simply want to know whether the differences in the situation created by the creation of another entity, Pacific No. 2, would justify such an entry, in his opinion, or meet with his approval.

The Witness: Well, I really don't feel capable of answering the question, because of my lack of knowledge of all the factors involved. [650]

By Mr. Slaff:

Q. Do you mean that the answer which you would give after reflection on the problem would be valueless to us and to the Commission in arriving at a conclusion with reference to the problem that confronts us in this case?

A. I very definitely feel that, having had no experience in financial matters of that kind, I cannot answer the question.

Q. Well, wasn't it necessary, Mr. Neill, to consider that type of a situation in arriving at your original conclusion as to whether or not the original Pacific transaction, the actual historical transaction, was or was not a write-up?

A. I can say this, I believe: If some organization undertook, maybe for the purpose of integra-

(Testimony of Will T. Neill.)

tion or any other purpose, to take over the properties of the Pacific Company, or any other company today, they would probably take those properties over at the best price possible, based on the valuation of the assets as of today, and that might involve, in the case of the Pacific Power & Light Company, a considerably higher plant value than the Pacific now has on its books of record as recording its costs,—costs to it.

Q. Of course, you are presupposing a transaction with some outside company, and not a transaction between the American and the Pacific; you are presupposing a transaction with some other organization; isn't that so? [651]

A. Yes.

Q. That is why I put the question the way I did, to eliminate the factor of arms' length transactions. I asked you to assume, with all other factors being equal, except that the American wanted to create Pacific No. 2, under the conditions which I stated.

A. That is, as I said before, if a new company should be organized to buy this property, or any other property, I should think it would be perfectly proper for it to take the property over at the value which the new organization thought it had, and pay for it accordingly, in securities, or otherwise.

Q. Let us say that the new organization, which is Pacific No. 2, is created now by the American Power & Light Company for the purpose of taking over the identical properties which the Pacific now holds, and all the directors of the Pacific No. 2 are

(Testimony of Will T. Neill.)

employees of the American Power & Light Company, or their law firm at the present time, would you approve, or do you think it proper that such a transfer of properties should be made to Pacific No. 2 and an entry into the plant account of Pacific No. 2 of some \$6,000,000 in excess of the amount now recorded in the plant account of the Pacific as it exists today?

A. That is the part of the question I don't feel capable of answering. I would be glad to, if I knew. But [652] that situation, as I see it, insofar as my part of it is concerned, would require careful study and consultation with somebody that was expert on these matters, both as to their actual operation and with respect to the regulations that pertain to it, and all other phases of it. I am trying to answer the question the best way I can, and I am not trying to avoid it.

Q. Tell me this, then: Would you recommend, in the Inland merger, to take over the Inland properties on the books of the Pacific at the present day reproduction cost of those properties, or on the basis of the cost on the Inland's books?

A. Well, that has been set up to come over, if it comes over, at the cost on Inland's books, with no change in the valuation of the properties.

Q. Well, why shouldn't it come over at reproduction cost, if that is higher than the cost on Inland's books?

A. Well, of course, in that case, the Inland is a wholly owned subsidiary of the Pacific, and I think

(Testimony of Will T. Neill.)

it should come over, in that case, at the cost to Inland.

Q. Well, what is the reason in back of your conclusion that, because it is a wholly owned subsidiary, the property should come over at the cost to Inland?

A. Well, I think I am doing a little bit of speculating, and I should not be doing it, because I am not familiar [653] with all the aspects of the problem. I have gone as far as I can.

Q. That is why I brought the problem back, Mr. Neill, to the Inland-Pacific merger situation, because, I assume that that has been the subject of discussion in your company, in which you are concerned, over a period of a good many years?

A. There has not been any discussion about bringing it over to the Pacific except at the cost shown on the Inland's books.

Q. That, I assume, was fundamental, and so considered by the Board?

A. That particular discussion was never entered into, and that is why I am lost in the hypothetical situation.

Q. The Inland illustration is a very concrete illustration, and that is why I wanted to discuss it with you; but, as I told you before, I don't want you to speculate and I don't want you to put on the record any statement that you feel you have been compelled to or prodded into giving; I want your mature judgment; but, again, I put the question to you, and if you feel you cannot answer it, of course, you will tell me so; if you can tell us

(Testimony of Will T. Neill.)

the reason back of the conclusion that was accepted as fundamental, that the Inland properties should come over to the Pacific at cost to Inland rather than at reduction cost, or any other fact?

A. As I say, it has never been discussed, and I have never given it any thought. [654]

Q. Would you make any distinction between the transfer of property from a wholly-owned subsidiary to the parent and the transfer of property between two wholly-owned subsidiaries of the same parent?

A. Any distinction in what respect?

Q. In connection with the amounts which should be recorded in the plant accounts as the result of such transaction?

A. Well, I do not know. As it appears to me in a transaction of that kind, it is entirely proper to put on the—that is, to put the properties on the new company's books at their value as determined at the time. Now, as to the property of the two related companies, I don't know about that. That is involved in—I personally can see no practical reason why the values of a new company of any kind should not reflect the true value of the asset at the time of the acquisition.

Mr. Slaff: May I have the first part of that answer, Mr. Reporter?

(Thereupon, the answer referred to was read aloud by the reporter as above recorded.)

By Mr. Slaff:

Q. I don't know whether you specifically an-

(Testimony of Will T. Neill.)

swered the question which I put to you, Mr. Neill, and I would like to put it again. [655]

With respect to the amounts which should be recorded on the books of the acquiring company, do you make any distinction between a transaction in which a wholly-owned subsidiary which sells property to its parent and the transaction in which one wholly-owned subsidiary of the parents sells property to another wholly-owned subsidiary of the same parent?

A. May I have that question read, please?

(Thereupon, the question referred to was read aloud by the reporter as above recorded.)

A. (continuing) Well, I don't know whether I can answer that or not. As I see it, it should be perfectly proper to put the value of the asset at the time of the transaction on the new company's books—that is, the value at the time of the transaction.

By Mr. Slaff:

Q. Well, is it perfectly proper, then, in your judgment, to put the value of the assets of Inland on the books of Pacific, at the time of the consummation of the merger between Pacific and Inland?

A. I don't know, Mr. Slaff.

Q. I asked you that question, Mr. Neill, of course, in the light of the answer of yours that immediately precedes that, where you made a generalization which led me to believe that you were stating that in general, as a generalization, you

(Testimony of Will T. Neill.)

approve of such action, and that is why I want to relate [656] it specifically to a transaction with which you are familiar and a transaction which specifically affects your Company.

A. I am getting into the phase of the situation with which I say I don't have enough experience to deal with it. I am trying to give you the answer.

Q. Surely; I realize that, Mr. Neill.

A. At the present time that is all I can say; I just don't know.

Q. Now then, you have said, as I recollect your earlier answer, that the property of Inland should come over to Pacific at the cost on Inland's books, because Inland is a wholly-owned subsidiary of Pacific, and that has been accepted as fundamental by you and your company people in considering the problem. It is so fundamental that you never even went into the reasons back of it.

Now, I ask you whether your conclusion would be the same if American owned all the stock of Inland, instead of Pacific, or would your conclusion in that respect be different?

A. Well, with respect to the Inland transaction of which I spoke before, of course, as I said, the question of bringing it onto Pacific's books at some value representing its present worth, it has never been discussed as compared with the proposition of bringing it on the Pacific's books at its recorded cost to Inland. It is my opinion, if I did express it as to that fact, that it probably should come [657]

(Testimony of Will T. Neill.)

to Pacific at its recorded cost; that was merely based on the fact that that was the plan, and the other possibility was not discussed.

Q. Well, can you see any distinction as to the affecting the amount at which the Inland property should come over to Pacific's books? Can you see any distinction in the situation where Pacific owns all the common stock of Inland, or American owns all the common stock of Inland?

A. Well, I think it would still be a case of what the value of the assets are at the time of the transaction.

Q. I am afraid I am not entirely clear as to your answers, Mr. Neill; so let us see if we can clear that up. As I understand it, with respect to the situation as it exists, and that is Pacific owning all the common stock of Inland, you say the property should come over from Pacific—from Inland to Pacific, at cost on Inland's books; right?

A. Well, that is the way it is coming. You say it should come. Now, the question where I can't follow you, of course, is whether it would be proper in a situation of that kind to take it on the Pacific's books at increased values based on the present worth of the assets.

Q. You don't think the Board is recommending an impropriety, or action that is improper in the judgment of the Board when it directs that the property of Inland, when it comes over, come over at cost on Inland's books, do you? [658]

A. No, that wasn't the question. The statement

(Testimony of Will T. Neill.)

I made was with respect to bringing it over at a higher value.

Q. Well now, your Board has, as I understand it, assumed as fundamental the property of Inland is to come over to Pacific at cost on Inland's books; is that correct?

A. That is the basis upon which the thing has been decided, yes. [659]

Q. Yes.

A. That is, that two properties should be merged just as they stand on the books.

Q. Now, can you see any distinction be made in the cost at which such property should come over to the books of Pacific between the situation where Pacific is the sole owner of all common stock of Inland, and the situation where American is the sole owner of all the common stock of Inland?

A. Well, there might be a difference in the nature of the properties, of course. Take in the case of Inland and Pacific, the whole set-up of the properties is different. They are practically one property. I don't get your—

Q. (Interposing) I don't think you answered the question as I put it to you. Again, assume all other factors are equal and the properties are operated in the same manner as they are today; all other factors are equal except that American, instead of Pacific, say, owns all the common stock of Inland. Now, would that factor make any difference in your mind as to the amount at which the

(Testimony of Will T. Neill.)

properties of Inland should come over to the books of Pacific?

A. Well, I don't think it would.

Q. All right. Now, if the Inland's property was brought over to Pacific's books at reproduction cost, or some other value higher than the cost on Inland's books, would you consider that a write-up?

[660]

A. That is bringing the property from Inland to Pacific at a higher value than it is now set up on Inland's books?

Q. That is right.

A. According to my understanding of the write-up, again, as we discussed it yesterday, I think, according to my fundamental definition, that would not be a write-up.

Q. That is why I put this case, to see whether there might be some variance in your thinking from that fundamental definition which you gave us yesterday, and I am asking you now whether you consider that such a transaction is a write-up.

A. It would be accounted for, the way I would look at it, as a part of your 100.5 Acquisition Adjustment on Pacific's books.

Q. Well, let's see. Do I understand, then, that you would not regard such a transaction as a write-up?

Mr. Laing Are you asking him, Mr. Slaff, in the hypothetical case, or in the case where the Pacific owns the Inland stock first?

Mr. Slaff: This is the case where the Pacific

(Testimony of Will T. Neill.)

owns the Inland stock and the property comes over on the Pacific's books at a value higher than the cost and the amount recorded on Inland's books.

A. Well, the question there as to the complete owner- [661] ship of Inland as to all debt and securities by Pacific,—my hesitation is the difficulty I have in getting away from my fundamental definition of a writ-up. Mr. Slaff, would you mind stating your question again for me?

Q. Surely. As conditions actually exist, if the property of Inland should come over to the books of Pacific at a value higher than the cost to Inland as recorded on Inland's books, and that property should be entered on Pacific's books at that higher value, would you consider that transaction a write-up?

A. That might be a write-up, in view of the complete ownership, as I started to say a while ago, at present of all of the Inland's securities and debt by Pacific.

Q. Now, I think you have told us earlier than you made no distinction between property with respect to the price or the amount at which property should be recorded as result of the transaction, you made no distinction between the situation where the sale was from a wholly owned sub to the parent, and the situation where the sale was from one wholly owned sub of the parent to another wholly owned sub, of the same parent. Now, in the light of that situation and statement of yours, as I understand it, assuming that all the securities of Inland

(Testimony of Will T. Neill.)

were owned by American Power & Light Company, and the property of Inland went over to Pacific at a value higher than the cost to Inland, would you say also [662] that in your view that transaction might be called a write-up?

A. That is, American owns all of the securities at the time of the transaction?

Q. That is right.

A. Yes, I think it might.

Q. I show you a photostatic copy of an exhibit of an exhibit that went into evidence in the Pacific-Inland case before the Commission, Docket IT-5469, being Exhibit No. 8, and ask you if you can identify that for us, Mr. Neill.

A. I believe this is a copy of that exhibit; I have seen it.

Q. That exhibit was prepared, was it not, by Mr. A. D. Root, at the request, as I understand it, of some of the staff of the Commission in that case?

A. I believe it was.

Q. Yes. And will you identify Mr. A. D. Root for the record, please?

A. I don't know exactly what Mr. Root's position is. He is an accountant in the New York organization, either of Electric Bond & Share, I think, —I would not be sure as to that; he is one of the New York men.

Q. Well, when you say he is an accountant, and if we let that stand as such in the record, it perhaps might not exactly do justice to Mr. Root's position, Mr. Neill. He is one of the chief account-

(Testimony of Will T. Neill.)

ing officers, is he not, of Electric [663] Bond & Share or Ebasco?

A. I do not know what his particular position is, but he is, of course, an accountant; I know that.

Q. Surely.

A. But he prepared the exhibit, and he has given testimony, I believe, in that case.

Q. I should think by now almost this Commission, or any regulatory commission, should be able to take judicial notice of Mr. Root's position.

A. I have never known what his title is or what position he holds.

Mr. Slaff: I should like to have this document, which is a photostatic copy of Exhibit No. 8, in Docket No. IT-5469, before the Federal Power Commission, marked for identification as an exhibit and received in evidence.

Trial Examiner: It may be marked for identification as Exhibit No. 33. Mr. Slaff, do you have other copies?

Mr. Slaff: I don't have them now, Mr. Examiner.

Trial Examiner: I wonder if you can furnish copies, inasmuch as that is in the formal files of the Commission.

Mr. Slaff: Well, I have a copy for the files, and I think perhaps it might be better to have it in the record. I will furnish additional copies for counsel and your Honor.

Trial Examiner: Very well. It will be marked for identification as Exhibit No. 33. [664]

(Testimony of Will T. Neill.)

(The document referred to was marked Exhibit No. 33 for identification.)

Trial Examiner: Is there any objection, Mr. Laing?

Mr. Laing: I have no objection to its being received in evidence as a correct copy of an exhibit as prepared and submitted by Mr. Root at the request of the staff of the Federal Power Commission in the merger hearing. I am not objecting to its acceptance, but I want to make clear that I do not feel that our own company is bound by the figures or the analyses that were made in this exhibit. I mean, it is not offered as a document as coming from the Pacific Power & Light Company.

Trial Examiner: But you do not object to the offer?

Mr. Liang: No; with the limited scope of its application.

Trial Examiner: Very well. Exhibit 33 will be received.

(Exhibit No. 33 was received in evidence.)

(Testimony of Will T. Neill.)

HEARING EXHIBIT No. 33

INLAND POWER & LIGHT COMPANY

STATEMENT OF ORIGINAL COST OF PROPERTIES OWNED MARCH 31, 1937

Ariel Hydro Electric Development.

Cash expenditures for construction incurred by:

Northwestern Electric Company.....	\$ 484,035.01
Phoenix Utility Company.....	7,282,208.90
Inland Power & Light Company.....	1,068,832.48

Total cash constructed cost of Ariel Hydro-electric project now on books of Inland Power & Light Company.....
 This is a Federal License project which has been audited by FPC but final costs have not yet been approved.

\$ 8,835,076.39

Yale and Upper Lewis River power sites

Cash expenditures incurred by:

Northwestern Electric Company.....	\$ 467,137.42
Inland Power & Light Company.....	210,826.94

Total—now on books of Inland Power & Light Company

\$ 677,964.36

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Inland Power & Light Company—(Continued)

Wallowa Falls Project

Costs audited and approved by Federal Power Commission	\$ 102,293.97
Disallowed by FPC.....	131.62
Additions—not audited by FPC.....	12.93

Total.....

\$ 102,438.52

Transmission line—cash.. expenditures made by Inland Power & Light Co.....

85,684.16

Total original cost of property—per books of Inland Power & Light Company.....

\$ 9,701,163.43

Plant account—March 31, 1937.....

10,036,189.53

Difference

\$ 335,026.10

represents book cost of Cove Hydro-electric plant

Brought Forward

\$ 335,026.10

This Cove plant was constructed by the Cove Power Company—whose books are not in possession of Inland Power & Light Company.

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Inland Power & Light Company—(Continued)

The Cove Power Company sold this plant along with other properties to Bend Water Light & Power Company. This Company's stock was acquired by American Power & Light Co. and its name changed to Deschutes Power & Light Company. American then sold the stock of Deschutes to Inland. Inland subsequently acquired all of Deschutes physical properties including the Cove plant and subsequently sold all of such properties except the Cove plant to Pacific Power & Light Company.

From the books of Deschutes Power & Light Co. and from an old appraisal, it appears that the cost of the Cove plant might have been about.....

\$	150,000.00
\$	185,026.10

Leaving an excess on Inland's books against this plant of.....

Bend Water, Light & Power Company (by change of name later becoming Deschutes Power & Light Company) acquired ownership of Cove plant as part of property of Deschutes Power Company.

INLAND POWER & LIGHT COMPANY

	Write-up as computed by FTC	Write-up as correctly computed
1. Under agreement in 1926 with L. B. Hatch (who was an intermediary acting for American Power & Light Company) Inland Power & Light Company acquired certain properties and securities from American Power & Light Company and placed such properties on its books in the amount of.....	\$ 3,195,369.27	\$ 3,195,369.27
The cost of these properties and securities to American Power & Light Company was.....	1,882,002.22	1,882,002.22
Excess value of properties and securities placed on books of Inland Power & Light Co. over cost to American Power & Light Company	\$ 1,313,367.05	\$ 1,313,367.05
2. Under agreement with L. B. Hatch dated July 31, 1928, Inland Power & Light Company purchased certain properties from American Power & Light Co. and placed same on its books in the amount of.....	\$ 3,264,927.78	\$ 3,264,927.78
Book value of fixed capital of predecessor companies at June 30, 1928.....	2,350,343.83	2,350,343.83
Excess	\$ 914,583.95	\$ 914,583.95

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Inland Power & Light Company—(Continued)

	Write-up as correctly computed	Write-up as computed by FTC
Less excess amount paid by American Power & Light over book value of common stocks of		
Deschutes Companies	\$ 556,289.52	\$ 531,365.60
Grangeville Electric Lt. & Pr. Co.....		<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">{</div> <div>Not shown in FTC report</div> <div style="margin-left: 10px;">}</div> </div>
Sherman Electric Co.....		
Yakima Central Heating Co.....	358,294.43	
Enterprise Electric Company.....		
Total Deduction	\$ 914,583.95	\$ 531,365.60
Excess in July 31, 1928 transaction.....	—	383,218.35
3. Total excess—1/2	\$ 1,313,367.05	\$ 1,696,585.40
4. Disposition excess:		
Amount of excess transferred to:		
The Washington Water Power Co. (see pages 3 and 4 attached)	988,521.78	
Amount of excess now remaining on books of Inland Power & Light Company (est.).....	185,026.10	
(See Inland original cost statement)		
Total.....	\$ 1,173,547.88	

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Inland Power & Light Company—(Continued)

	Write-up as correctly computed
\$ 139,819.17	
\$1,313,367.05	

Write-up as
computed by FPC

Since all the remaining properties of Inland Power & Light Company involved in creation of excess were in 1930 transferred to Pacific Power & Light Company, the remainder of the excess, or.....

was transferred to the plant account of Pacific Power & Light Company.

(See page 5 attached)

Total excess accounted for.....

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)
THE WASHINGTON WATER POWER COMPANY

1. On February 11, 1930, The Washington Water Power Company purchased, under an agreement with American Power & Light Company—among other things—certain properties then owned by Inland Power & Light Company (a 100% owned subsidiary of American Power & Light Company)

The Federal Trade Commission on page 97 of Senate Document 92, part 29, computed a write-up of The Washington Water Power Company in the February 11, 1930 transaction, as follows:

Amount placed in plant account of The Washington Water Power Co. for properties purchased.....	\$ 6,304,702.59
Amount in predecessor's plant for same properties:	
Kootenai Power Co.....\$ 239,272.22	
Consumers Company	290,232.18
Inland Pr. & Lt. Co.....	3,551,000.00
Total.....	\$4,080,504.40
Less Retirement Reserves—	
Kootenai & Consumers Co.....	292,416.37
Net book values.....	\$ 3,788,088.03
Write-up—as computed by FTC.....	\$ 2,516,614.56

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

The Washington Water Power Company—(Continued)

2. However, the Inland properties included above, amounting to \$3,551,000 had been

	American's acquisition cost or Inland's construction cost	Inland's purchased or construc- tion cost of prop- erties sold to The Washington W.P.Co.
Purchased from American by Inland		
Washington Idaho Water Lt. & Pr. Co. properties.....	\$ 1,023,147.49	\$ 2,011,669.27
Lewiston Clarkston Improvement Co. properties.....	682,295.86	682,295.86
Grangeville Electric Light properties.....		
Constructed by Inland Power & Light Co.		
Additions to above properties.....	857,034.87	857,034.87
Other properties constructed.....		
Totals for property sold by Inland to The Washington Water Power Co.....	\$ 2,562,478.22	\$ 3,551,000.00

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

The Washington Water Power Company—(Continued)

American's acquisition cost or Inland's construction cost	Inland's purchased or construc- tion cost of prop- erties sold to The Washington W.P.Co.
	\$ 2,011,669.27
	1,023,147.49
	<hr/>
	\$ 988,521.78

Thus it will be seen that Inland had acquired property from American Power & Light Company and paid American therefor (in securities).....
which properties had cost American.....

Putting an excess on Inland's books of.....
which excess was a part of the Inland Power & Light Co.
write-up found by the Federal Trade Commission.

From the above it will be further seen that this excess was passed along to The Washington Water Power Company by Inland Power & Light Co., thereby, in effect, removing it from Inland's books and placing it on The Washington Water Power Company's books.

ADR 7/16/37

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

PACIFIC POWER & LIGHT COMPANY

1. On January 1, 1926 Inland purchased certain properties and securities from American Power & Light Company

Included in such purchase was all the capital stock of:

Bend Water Light & Power Company

Deschutes Ice Company

All of the properties of these companies were sold by Inland Power & Light Company in 1930 to Pacific Power & Light Company

except

The Cove plant, which was retained by Inland.

2. The above securities had cost American Power & Light Company

The Inland paid American, for them, in securities, the sum of

\$ 858,854.73
1,183,700.00

An excess, then, on Inland's books of.....

3. It has been estimated that the Cove plant had a cost to American of approximately.....

Its book value on Inland's books is.....

\$ 150,000
335,026.10

Therefore, of the above excess of \$324,845.27, there still remains on Inland's books only.....

185,026.10

Thus, the difference, or.....

\$ 139,819.17

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Pacific Power & Light Company—(Continued)

was transferred to Pacific Power & Light Company in the 1930 sale of properties to Pacific Power & Light Company.

1. Write-up as set forth by Federal Trade Commission on page 145 of Volume 35, of Federal Trade report:

Under agreement dated July 23, 1910, Pacific Power & Light Company issued to Weld M. Stevens (an intermediary for American Power & Light Company) the following securities:

Common stock par value.....	\$ 5,997,000.00
Preferred stock—par value.....	1,250,000.00
Bonds	3,200,000.00

\$10,447,000.00

4,767,572.34

\$ 5,679,427.66

Total.....
The above securities cost American Power & Light Company the sum of.....

Excess of par value and principal amount over cost to American Power & Light Co.....

2. Write-down—not considered by FTC:

In 1921 American Power & Light Company surrendered

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Pacific Power & Light Company—(Continued)

—gratis—to Pacific Power & Light Company—common
stock of Pacific of a p. v. of.....

\$ 345,000.00

\$ 5,334,427.66

3. Write-up—net—after applying write-down.....

The books of predecessor companies, i.e., companies whose properties were purchased from American Power & Light Company in 1910, were not in 1910, and are not now available, so that the original cost of these properties (which cost American Power & Light Co. \$4,767,572.34) may have been more or less than such figure. So that the real excess over original cost might have been more or less than the \$5,334,427.66 above outlined.

4. From the above, it will be noted that

American Power & Light Company owned common stock of Pacific Power & Light Company as a result of the above transactions of a par value of.....

Which par value exceed American's cost of such stock by

\$ 5,652,000.00

5,334,427.66

Leaving an actual cost to American of.....

For the \$5,652,000 par value of Pacific Power & Light Company Common.

\$ 317,572.34

Brought Forward

\$ 317,572.34

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Pacific Power & Light Company—(Continued)

5. Subsequent to July 23, 1910:

American Power & Light Company sold all the preferred stock and Bonds of Pacific Power & Light Co., which it had received in the July 23, 1910 transaction and suffered discounts and expenses in such sales as follows:

On \$1,250,000 p. v. preferred stock.....	\$ 161,500
On subsequent purchases and sales of Pacific Preferred stock	208,804.79
On \$3,200,000 Bonds.....	447,567.00
	<hr/>

Total discounts and expenses suffered by American Power & Light Co.....

\$ 817,871.79

Total

\$ 1,135,444.13

representing American Power & Light Co.'s cost of \$5,652,000 p. v. of Pacific Power & Light Co.'s common stock
(See FTC—volumes 23 & 24—part 2, page 930)

6. On July 31, 1930, American Power & Light Company turned over to Pacific Power & Light Company:

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Pacific Power & Light Company—(Continued)

American's
cash cost of securi-
ties properties &
cash turned over to
Pacific on 7/31/30

Securities of Pacific Power & Light Co. 1900 shares 7% 2nd Preferred stock.....	\$ 190,000
Securities of Inland Power & Light Co. 6% Demand Note—\$1,200,000 p.a.....	1,200,000
6% Demand Note— 1,700,000 p.a.....	1,700,000
6% Demand Loans—1,430,000 p.a.....	1,430,000
Common stock —1,545,369.27 S.V.	232,002.22
Properties: Public Service building in Portland, Oregon.	
Constructed cost	2,186,387.29
Cash in amount of.....	10,829,000.00
Total	\$17,767,389.51
Brought Forward	\$17,767,389.51
For the above American Power & Light Company received from Pacific Power & Light Company:	

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Pacific Power & Light Company—(Continued)

American's
cash cost of securi-
ties properties &
cash turned over to
Pacific on 7/31/30

1st Mortgage Bonds.....	\$17,000,000
\$6 Preferred Stock	500,000
Common stock non par of stated value.....	1,245,000

\$18,745,000.00

Total

Excess—(Assume this represents additional book cost to Pacific Power & Light Co. of Inland P & L Common stock)

\$ 977,610.49

American Power & Light Company sold the bonds and stocks to investment bankers and suffered discounts and expenses in selling same, viz:

Discount on bonds.....	\$ 1,360,000.00
Expenses of printing, stamps, etc.....	87,627.74
Commissions paid Electric Bond and Share Company....	128,750.00
Discount on Preferred stock.....	25,000.00

Total expenses and discounts suffered by American Power & Light Company (in 1930 transaction).....

\$ 1,601,377.74

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

Pacific Power & Light Company—(Continued)

SUMMARY

1. Write-up as charged by FTC.....	\$ 5,679,427.66
Deduct subsequent write-down—applying to above.....	345,000.00
	<hr/>
Net write-up per FTC adjusted.....	\$ 5,334,427.66
This write-up per FTC includes Bond discount & expense and preferred stock expense capitalized totaling.....	
2. Excess in July 31, 1930 transaction.....	977,610.49
	<hr/>
Total excess	\$ 6,312,038.15

\$817,871.79

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

PACIFIC POWER & LIGHT COMPANY
INLAND POWER & LIGHT COMPANYSUMMARY OF "EXCESS" SITUATION AS IT WILL EXIST ON BOOKS OF PACIFIC POWER
& LIGHT COMPANY AFTER GIVING EFFECT TO CONSOLIDATION WITH INLAND
POWER & LIGHT COMPANY, AS PER ADJUSTMENTS SHOWN IN APPLICATION.

1. Plant accounts April 30, 1937—per books—before consolidation:

Pacific Power & Light Company.....	\$42,045,991.16	
Deduct amount included in above for In- land Power & Light Company		
Notes	\$7,959,700	
Stock		
(see pages 2 and 3 of Pacific P & L Co. write-up statement)	\$1,209,612.71	
Balance represents property of Pacific Power & Light Inland Power & Light Company.....	\$ 9,169,312.71	\$32,876,678.45 10,035,730.77
Total		\$42,912,409.22
Deduct excess included in above figures:		
Pacific Power & Light Co.—per page 5 of P. P. & L. write- up statement		\$ 6,312,038.15
Inland Power & Light Co. per page 2 of Inland P & L write-up statement now on Inland's books.....		185,026.10

(Testimony of Will T. Neill.)

Hearing Exhibit No. 33—(Continued)

PACIFIC POWER & LIGHT COMPANY
INLAND POWER & LIGHT COMPANY

Pacific Power & Light Company, Inland Power & Light Company—Summary of "Excess" Situation as It Will Exist on Books of Pacific Power & Light Company After Giving Effect to Consolidation With Inland Power & Light Company, as Per Adjustments Shown in Application—(Continued)

now on Pacific P & L books.....	\$ 139,819.17	
Total deductions		\$ 6,636,883.42
Balance—after deducting excess.....		\$36,275,525.80
2. Plant account of both Companies—after consolidation.....		\$42,727,383.12
Deduct excess included in above figures:		
Pacific P & L Co.—see above.....	\$ 5,334,427.66	
Pacific P & L Co.—from Inland—see above.....	139,819.17	
Excess eliminated in consolidation.....		\$ 5,474,246.83
Balance—plant account consolidated after deducting excess....		\$36,253,136.29
3. The excess in Pacific Power & Light Co. plant account, after consolidation of		\$ 5,474,246.83
will be represented by:		
Pacific Power & Light Co.		
1910 transaction	\$ 5,334,427.66	
1930—Taken over from Inland.....	139,819.17	
Net.....		\$ 5,474,246.83

(Testimony of Will T. Neill.)

Mr. Slaff: I would like also at this time, Mr. Examiner, to have marked for identification and received in evidence a photostatic copy of the minutes of a meeting of the Executive Committee of the American Power & Light Company, 71 Broadway, New York, New York, held on Monday, June 13, 1910. This particular photostatic copy of the minutes is an exhibit before the Securities and Exchange Commission, being No. 212-F, in Docket No. 59-12.

Trial Examiner: It will be marked for identification as [665] Exhibit No. 34.

(The Document Referred to Was Marked Exhibit No. 34 for Identification.)

Mr. Laing: No objection to it.

Trial Examiner: Exhibit 34 will be received.

(Exhibit No. 34 Was Received in Evidence.)

HEARING EXHIBIT No. 34

Securities and Exchange Commission. Docket No. 59-12. Commission's Exhibit No. 212 F. In the Matter of Elec Bond & Share. Date 8/31/41. Witness..... Elec Reporter, Inc. (Illegible.) Reporters. By Grover.

A meeting of the Executive Committee of the American Power & Light Company was held at

(Testimony of Will T. Neill.)

#71 Broadway, New York, N. Y., on Monday
June 13th, 1910, at 4:00 o'clock P. M.

PRESENT—R. E. Breed

F. L. Dame

S. Z. Mitchell

F. C. Walcott

N. M. Young

EPS

Mr. Wehrhane, a Director, was also in attendance.

Mr. S. Z. Mitchell, Chairman of the Board, acted as Chairman of the meeting, and Mr. E. P. Summerson, Assistant Secretary of the Company, acted as Secretary.

The Chairman presented a tentative plan of consolidation of the Astoria Electric Company, the Columbia Power & Light Company, the Walla Walla Valley Railway Company and the Yakima Pasco Power Company, the three latter companies being temporary organizations which had been formed to take over the properties of the Northwest Light & Water Company, the Yakima Valley Power Company and the properties of the Northwestern Corporation, east of the Cascade Mountains as had been acquired under and by authority of the Board of Directors at meetings held on February 15th, 1910 and March 11th, 1910 respectively. He proposed Pacific Power & Light Company as a suitable name for the new company, to be incorporated under the laws of the State of Maine and recommended that its capitalization be approximately as follows:

(Testimony of Will T. Neill.)

	Authorized	To be issued now
Common stock	\$6,000,000.00	\$6,000,000.00
Preferred Seven Percent		
Cumulative Stock	1,500,000.00	1,250,000.00

On motion, it was

Voted, that the consolidation of the aforesaid companies and the capitalization of same as above set forth be and the same hereby is approved.

The Chairman stated that the Portland Gas & Coke Company had tentatively arranged for the issuance and sale of \$215,000. par value of additional First Mortgage Five Percent Bonds, at 92½% & interest, of which \$50,000 par value would be issued forthwith and the remaining \$165,000. par value to be in the form of five percent interim certificates secured by deposit of \$165,000 cash with the United States Mortgage & Trust Company, New York, N. Y., as Trustee, redeemable from time to time, par for par, upon delivery to the Trustee of First Mortgage Five Percent Bonds authorized and issued under the terms of the mortgage securing same, and asked for a formal expression in the premises by the Committee.

On motion, it was

Voted, that the issuance of 50,000 par value First Mortgage Bonds and \$165,000. par value interim certificate and the sale thereof at 92½% and interest (EPS) as above is hereby approved.

The Chairman presented for the consideration of the Committee improvement requisitions numbers 13 for \$51,134.86 and 15 for \$26,286.80 covering respectively installation of Tungsten Lamps

(Testimony of Will T. Neill.)

for street lighting and extension of high pressure gas mains of the Kansas Gas & Electric Company, Wichita, Kansas.

On motion, it was

Voted, that the requisitions, as above, be and the same hereby are approved.

The Secretary asked for a resolution approving and authorizing the signatures of Messrs. Hill and Summerson as Vice President and Assistant Secretary respectively as endorsers as officers of this Company to four hundred and ninety three (493) shares of the capital stock of the Astoria Electric Company, and of four notes of \$50,000. each of the Yakima Pasco Power Company which have been deposited with the Standard Trust Company of New York, New York, N. Y., as collateral for the loan of this Company.

On motion, it was

Voted, that the endorsements on behalf of this Company as above be and the same hereby are approved.

There being no further business the meeting adjourned.

E. P. SUMMERSON
Secretary.

By Mr. Slaff:

Q. Mr. Neill, I hand you a document headed, "Pacific Power & Light Company, Statement of Cost to American Power & Light Company, Com-

(Testimony of Will T. Neill.)

mon Stock of Pacific Power & Light Company, as computed from statement prepared by D. W. Jack, Treasurer of American, furnished to the staff of the Federal Power Commission," and I will ask you if you will be good enough to identify that one-page tabulation.

A. Yes. That was prepared in our office.

Mr. Laing: That is a document you used as a memorandum in testifying on that subject, was it?

The Witness: That is correct.

Mr. Slaflf: Yes. That is one of which you furnished copies either yesterday or the day before, Mr. Laing. I should like to have this document marked with the next exhibit number, and received in evidence.

Trial Examiner: It will be marked for identification as Exhibit No. 35.

(The Document Referred to Was Marked Exhibit No. 35 for Identification.) [666]

Trial Examiner: Exhibit 35 will be received.

(Exhibit No. 35 Received in Evidence.)

(Testimony of Will T. Neill.)

PACIFIC POWER & LIGHT COMPANY

STATEMENT OF COST TO AMERICAN POWER & LIGHT COMPANY OF COMMON STOCK OF
PACIFIC POWER & LIGHT COMPANY, AS COMPUTED FROM STATEMENTS PREPARED
BY W. D. JACK, TREASURER OF AMERICAN, FURNISHED TO STAFF OF FEDERAL
POWER COMMISSION.

Investment of American in securities and properties trans-
ferred to Pacific in 1910 (per statement furnished by D. W.

Jack, Treasurer of American—Revised Statement B—page 48)

Deduct proceeds from sale of preferred stock and bonds:

Preferred Stock (Revised Statement B—page 48).....

First Mortgage 5% bonds (Revised Statement B—page 48)....

\$ 1,250,000.00

3,200,000.00

Total Par or P. A. of securities sold.....

\$ 4,450,000.00

\$ 4,749,135.09

(Testimony of Will T. Neill.)

Pacific Power & Light Company—Statement of Cost to American Power & Light Company of Common Stock of Pacific Power & Light Company, as Computed From Statements Prepared by D. W. Jack, Treasurer of American, Furnished to Staff of Federal Power Commission.—(Continued).

Discount and Expense on sale of stock (Revised Statement B—page 13—per Statement attached to letter of Neill of Sept. 10, 1940).....	161,500.00	
Discount and Expense on sale of bonds (Revised Statement B—page 48—see statement attached to letter of Neill of Sept. 10, 1940).....	448,616.25	
	<hr/>	
Total Discount and Expense.....	\$ 610,116.25	3,839,883.75
Difference or Net Proceeds.....		<hr/>
Remainder applicable to Common Stock Received in 1910.....		\$ 909,251.34
Sale of 1,000 shares Common Stock for Cash May 19, 1915.....		100,000.00
Cost to American of addition Common Stock of \$1,245,000 issued by Pacific to American in 1930 transaction (per statement furnished by D. W. Jack, Treasurer of American—Revised Statement B—page 48).....		<hr/>
		1,868,767.25
Investment of American in Pacific Common Stock as computed from the statements furnished by B. W. Jack, Treasurer of American referred to above.....		<hr/>
		\$2,878,018.59

(Testimony of Will T. Neill.)

By Mr. Slaff:

Q. Now, underlying this summary exhibit, Mr. Neill, was certain data which you received from the American Power & Light Company, which you transmitted, also, to the Federal Power Commission examiners; is that correct?

A. That is correct.

Trial Examiner: Is that summary exhibit, Exhibit 35 which was just received; is that correct?

Mr. Slaff: Yes. The last one which has been offered.

By Mr. Slaff:

Q. I wonder if you would be good enough to identify the underlying material, together with the letters of transmittal, so that we might offer them for the record? A. Yes.

Q. I would like to have this material identified for the record.

A. This is material which had been previously furnished to the Commission's examiners. This is a document (indicating) which was obtained by us from D. W. Jack, Secretary-Treasurer of the American Power & Light Company, entitled "Statement of American Power & Light Company's Investment in the Companies and Properties Transferred to Pacific Power & Light Company at the Formation of the Latter [667] Company in 1910."

Attached to the statement is a copy of a letter dated September 10, 1940, with which I transmitted this copy of this statement to Mr. J. J. O'Neil, Chief Examiner of Accounts, Federal

(Testimony of Will T. Neill.)

Power Commission, 1006 Public Service Building, Portland, Oregon. The letter, also, shows a carbon copy of the statement and a letter with the statement went to Mr. J. J. Pentney, Senior Accountant, Public Utilities Commission of Oregon.

Mr. Slaff: I should like to have this marked for identification with the next exhibit number and received in evidence.

Trial Examiner: It will be marked as Exhibit No. 36 for identification.

(The Document Referred to Was Marked Exhibit No. 36 for Identification.)

Mr. Slaff: And I should like to have permission to withdraw this, so that it may remain in the Company's file; that is, I should like to withdraw it for the purpose of having copies made and then let the original remain in the Company's file, substituting a copy for the original in the record.

Trial Examiner: Very well.

Mr. Slaff: I offer that in evidence, Mr. Examiner.

Mr. Laing: No objection. [668]

Trial Examiner: Exhibit 36 will be received.

(Exhibit No. 36 Received in Evidence.)

By Mr. Slaff:

Q. Will you identify the next document, Mr. Neill?

A. The next document is a five-page typewritten statement, bearing the title "Statement of

(Testimony of Will T. Neill.)

American Power & Light Company's Investment in the Companies and Properties Transferred to Pacific Power & Light Company at the formation of the Latter Company in 1910," to which statement is attached the original of a letter received by me from Mr. D. W. Jack, Secretary-Treasurer of the American Power & Light Company, transmitting the described statement to me; and another letter dated December 27,—Mr. Jack's letter was dated December 23, 1940,—and another letter dated December 27, 1940, with which I transmitted a copy of Mr. Jack's letter and a copy of the statement to Mr. James H. Flynn, Chief Examiner of Accounts, Federal Power Commission, 1008 Public Service Building, Portland, Oregon. This letter also shows that a copy of Mr. Jack's letter and a copy of the statement was sent to J. J. Pentney, Senior Accountant for the Public Utilities Commission of Oregon.

Mr. Slaff: I should like to have this, Mr. Examiner, marked with the next exhibit number, and received in evidence; again, with permission to withdraw, if necessary, and have a copy made for the record. [669]

Trial Examiner: It may be marked for identification as Exhibit 37.

(The Document Referred to Was Marked Exhibit No. 37 for Identification.)

Trial Examiner: Is there any objection, Mr. Laing?

(Testimony of Will T. Neill.)

Mr. Laing: No objection to its being received.

Trial Examiner: The exhibit is received, and permission is granted to withdraw and substitute a copy.

(Exhibit No. 37 Is Received in Evidence.)

By Mr. Slaff:

Q. Will you identify the next document which you have, Mr. Neill?

A. The next document is a letter dated April 29, 1941, addressed by Mr. D. W. Jack, Secretary-Treasurer of the American Power & Light Company, transmitting a two-page statement, one of which is entitled "American Power & Light Company Purchase of Condon Electric Company", and the other is entitled "American Power & Light Company Purchase of Heppner Light & Water Company". Also there is attached to this document copy of a letter which was dated May 9, 1941, with which I transmitted a copy of Mr. Jack's letter and the two-page statement to Mr. James H. Flynn, Chief Examiner of Accounts, Federal Power Commission, care of Washington Water Power Company, Spokane.

Mr. Slaff: I should like to have that document marked [670] with the next exhibit number and received in evidence.

Trial Examiner: It will be marked for identification as Exhibit 38.

(The Document Referred to Was Marked Exhibit No. 38 for Identification.)

(Testimony of Will T. Neill.)

Mr. Slaff: With the same permission, to withdraw and substitute a copy.

Mr. Laing: No objection.

Trial Examiner: Exhibit 38 will be received, and permission will be granted to withdraw the original and substitute a copy.

(Exhibit No. 38 Received in Evidence.)

By Mr. Slaff:

Q. Now, will you be good enough to identify the next document which you have, Mr. Neill?

A. The next document is a two-page document—a three-page document—typewritten, the first page of which bears the title “Statement of American Power & Light Company Investment in Companies and Properties Transferred to Pacific Power & Light Company in 1911”, the second sheet bearing the same title, and the third sheet bearing the title “Statement of American Power & Light Company Investment in the Hydroelectric Company Transferred to Pacific Power & Light Company May 9, 1915.”

Q. May 19, 1915, is it not? [671]

A. Yes, May 19, 1915. Attached to these statements is the original of a letter addressed to me on April 29, 1941 by Mr. D. W. Jack, Secretary-Treasurer of the American Power & Light Company, and also a copy of a letter dated May 9, with which I transmitted copies of Mr. Jack's letter and the attached statements to Mr. James H. Flynn, Chief Examiner of Accounts, Federal

(Testimony of Will T. Neill.)

Power Commission, care of Washington Water Power Company, Spokane.

Mr. Slaff: I should like to have that marked as the next exhibit and received in evidence.

Trial Examiner: It will be marked for identification as Exhibit 39.

(The Document Referred to Was Marked Exhibit No. 39 for Identification.)

Mr. Laing: No objection to the receipt of that in evidence. Do you likewise wish to withdraw that and substitute a copy?

Mr. Slaff: Yes. Thank you.

Trial Examiner: Very well. Exhibit 39 will be received, and counsel is authorized to withdraw the exhibit for the purpose of making a copy.

(Exhibit No. 39 Received in Evidence.)

By Mr. Slaff:

Q. The next document is what, Mr. Neill?

A. The next document is a five-page typewritten [672] statement, entitled "Statement of American Power & Light Company Cost of Performance of Agreement with Pacific Power & Light Company, dated July 16, 1930." The statement is accompanied by a letter dated January 27, 1941, addressed to me by D. W. Jack, Secretary-Treasurer of the American Power & Light Company, and also by copy of a letter dated January 30, 1941, from me to Mr. James H. Flynn, Chief Examiner of Accounts, Federal Power Commission, 704 Public Service Building, Portland, Oregon; with which

(Testimony of Will T. Neill.)

letter I transmitted a copy of the statement and a copy of Mr. Jack's letter to Mr. Flynn.

Mr. Slaff: Mr. Examiner, I should like to have that document marked with the next number and received in evidence, with the same reservation for the purpose of substituting a copy for the original.

Trial Examiner: It will be marked for identification as Exhibit 40.

(The Document Referred to Was Marked Exhibit No. 40 for Identification.)

Trial Examiner: Is there any objection, Mr. Laing?

Mr. Laing: No objection.

Trial Examiner: Very well. Exhibit 40 will be received and permission granted to substitute a copy.

(Exhibit No. 40 Received in Evidence.)

Trial Examiner: We will take a five-minute recess.

(Whereupon, a short recess was taken after which [673] proceedings were resumed as follows:)

Trial Examiner: The hearing will be in order.
By Mr. Slaff:

Q. Mr. Neill, I show you a photostatic copy, headed "Investment in the Companies and Properties Transferred to Pacific Power & Light Company Under Agreement With Weld M. Stevens,

(Testimony of Will T. Neill.)

Dated July 23, 1910", which also is Exhibit No. 206 in the proceedings before the Securities and Exchange Commission, Docket 59-12, "In the Matter of Electric Bond and Share Company, et al", and ask you if this is a summary statement of what it purports to be in the heading. I realize that you have not prepared it and perhaps have not seen the exhibit before. I think it has been seen by people in your Company, however.

A. It seems to be a summary of the investments referred to in the title. [674]

Q. Mr. Neill, during this morning we have discussed the relationship of Inland to Pacific and discussed the principles arising out of that relationship, and we have all proceeded on the theory that we all knew the relationship between the two companies; however, I am not sure that that is set out in the record. Will you therefore tell us on the record Pacific's relationship to Inland, and what Inland does?

A. The Inland is a wholly-owned subsidiary of Pacific; Pacific owns all the stock of Inland, and also owns all of Inland's debts in the form of notes.

Q. That is, all the debts of Inland to Pacific are represented by notes; is that correct?

A. That is correct.

Q. As I understand it, the Inland has three hydroelectric projects?

A. I will outline a description of the properties. The Inland owns three hydroelectric projects, [693]

(Testimony of Will T. Neill.)

the largest of which is known as the Ariel Project on Lewis River in Washington; another small project is in Wallowa County, Oregon, known as the Wallowa Falls Plant, which is also, as is Ariel, a licensed project. The third plant is on the Crooked River, in central Oregon, known as the Cove Plant, which is also a licensed plant.

In addition to the three hydroelectric plants, the Inland also owns one transmission line which interconnects the Ariel Plant to the point at which the Inland Company line is connected with the transmission line now owned by Public Utility District No. 1 of Cowlitz County. The Inland operates the Ariel Plant and the Enterprise or the Wallowa Plant and the transmission line. The Cove Plant is leased from the Inland to the Pacific Company.

I think that is a general brief outline of the situation.

Q. I think that is sufficient.

Mr. Laing: You have not mentioned the holdings of the Inland above the Ariel Project.

The Witness: Oh, yes, I should have mentioned that.

In connection with the Ariel Plant, but not a part of the project property, that is, the licensed project property, the Inland Company also owns lands and has made a considerable investment in preliminary engineering and surveying expense in connection with other developmets [694] above the Ariel Plant on the Lewis River, what we ordi-

(Testimony of Will T. Neill.)

narily refer to as the upper Lewis River developments. [695]

Q. Now, there is another matter I want to take up with you, and that deals with the statement contained at page 7 of Revised Statement B on Exhibit 17, to the effect that your Company has come to the conclusion that no accurate basis exists for segregating the total of \$6,239,000 according to nature, which you have established in Account 100.5,—according to nature of its components, and that the present officers of the Company have no knowledge or means of knowledge, thirty years or more after the event, as to the weight which may have been given by the Directors of the Company in 1910 to the various elements of value inherent in the properties acquired in July of that year. Now, there are some [823] people here who were active in the original purchase of the properties of Pacific, are there not; for example, Mr. Talbot?

A. Yes, sir.

Q. That is Mr. Guy W. Talbot, who has been previously identified in this proceeding?

A. Yes, he was an officer, or president, shortly after the Pacific was organized, as the record discloses.

Trial Examiner: Do you know approximately the age of Mr. Talbot, Mr. Neill?

The Witness: No, I don't. Mr. Laing can tell you approximately, I think.

Mr. Laing: He was born on the 12th of August, 1873.

(Testimony of Will T. Neill.)

By Mr. Slaff:

Q. Mr. Talbot, as I understand it, is now retired from active participation in the affairs of the Company but is here in the courtroom and is still a Director of the Company?

A. Yes. He has been retired for several years—I mean from active duties—but he is still a Director of the Company.

Q. Does he still receive a salary from the Company? A. Yes, I believe he does.

Q. And Mr. L. A. McArthur is still about?

A. Mr. McArthur is still alive and is still in the Company's organization. [824]

Q. What is his position?

A. He is vice-president, and Mr. McArthur is no longer active in the general management or operation of the Company. He does lots of work for the Company, but he is not active in the details of the operation or management of the Company.

Q. But he is a Director, is he not?

A. He is.

Q. And was he with the Company from its inception, or thereabouts?

A. He was with the Company nearly as long as Mr. Talbot, I believe.

Q. Mr. Cookingham, is he still a Director of the Company? A. He is.

Q. He has been a Director of the Company since 1910, has he not?

(Testimony of Will T. Neill.)

A. Well, from a very early date, yes; it is in the record, too.

Q. He was, I believe, one of the first of the so-called Western Directors of the Company?

A. I believe so.

Q. Mr. Richards, is he still a Director of the Company? A. He is. [825]

Q. And has he been a Director of the Company since 1910?

A. I don't know the exact date, but it was a very early date; that is also in the record, I think, in some of the exhibits in the record.

Q. And Mr. John A. Laing is still active in the affairs of the Company; sometimes too active for us to get the rest that we ought to get?

A. Mr. Laing is quite active.

Q. Mr. Laing has been here with the Company since the fall of 1910; is that correct?

A. I believe so.

Mr. Laing: I will admit that, Mr. Slaff—it was in December of 1910 that I came here.

By Mr. Slaff:

Q. Mr. Schoolfield, is he still about?

A. Mr. Schoolfield is general superintendent of the Company now; formerly chief engineer, and he is either general superintendent or operating superintendent—general superintendent.

Q. How long has he been with the Company?

A. Mr. H. H. Schoolfield has been with the Company a good many years, too. Until about a year or so ago he was chief engineer. His early connec-

(Testimony of Will T. Neill.)

tion with the Company was in an engineering capacity. [826]

Q. Mr. C. W. Platt is still with the Company, is he not?

A. Mr. Platt is not an officer of Pacific Company now.

Q. He was an officer and is now special advisor to the Company as I understand it; is that right?

A. Yes; he was an officer of the Company until about—I don't know the date—1935 or '36; somewhere along there.

Q. And he came with the Company way back, if I recollect it, somewhere between 1910 and 1912?

A. No. I don't think Mr. Platt came in that soon. Mr. Platt came into the Pacific organization at a later date, as I remember it. Mr. Platt, originally, was chief accounting officer of Portland Gas & Coke Company, and eventually he became chief accounting officer of Pacific; but I don't know what date it was; but it was, as I remember it, some time later.

Mr. Laing: I can give you that date, if you like, Mr. Slaff.

Mr. Platt: 1924.

By Mr. Slaff:

Q. Mr. G. L. Myers is still about, is he not?

A. Mr. Myers is still in the Company's organization.

Q. How long has he been with the Company?

A. I believe Mr. Myers has been with the Company a long time; I believe he started out in a

(Testimony of Will T. Neill.)

secretarial job of [827] some kind—not corporate secretarial job, but he had been—he was with Mr. Talbot for a good many years, and I believe he is now assistant secretary.

Q. Mr. Hawkins, how long has he been with the Company?

A. Well, I believe Mr. Hawkins has been with the Company since its inception, or shortly afterwards.

Q. Mr. J. E. Yates, is he still alive?

A. Mr. Yates is still alive, yes. Mr. Yates is in the organization. Mr. Yates was in Mr. Schoolfield's department, in the general superintendent's department. Mr. Yates is an engineer. His activities have always been along engineering lines.

Q. And has he been with the Company since its inception? A. I couldn't say.

Q. Approximately when, then?

A. I don't know.

Q. How about Mr. Ainsworth?

A. Mr. Ainsworth was a Director of the Company until—well, I don't know how long; well, I don't know how long he has been a Director, but he was a Director of the Company along in '35 and '36.

Q. I think Mr. Ainsworth goes back as far as 1910 in a directorship of the Company. [828]

Mr. Slaff: Do you know that, Mr. Laing?

Mr. Laing: Just a moment, Mr. Slaff, and I can give you the exact date (Mr. Laing referring to

(Testimony of Will T. Neill.)

some papers). He was elected a Director August 20, 1910, and he resigned November 14, 1935.

By Mr. Slaff:

Q. Now, did you talk with any of these people, or any others, to determine or attempt to determine whether any segregation could be made of the amounts established in Account 100.5 according to nature, of the components?

A. No, I did not.

Q. And dealing for the moment with the properties acquired after the inception of Pacific, many of these people whose names you have mentioned participated actively, did they not, in the negotiation for the purchase of such after-acquired properties?

A. Do you mean the so-called 1911, '12 and '15 acquisitions?

Q. Yes. They made investigations prior to the purchase in conducting negotiations with vendors, —prospective vendors—and so on?

A. Undoubtedly some of them did. I mean just the—well, those men who were officers of the Company. I should say I am not familiar with what details of the work they did in that connection; but undoubtedly they must have. [829]

Q. And in the original acquisition of properties that came over to Pacific at its inception, Mr. Talbot was here, was he not, as an agent, acting on behalf of American in the acquisition of those properties?

(Testimony of Will T. Neill.)

A. I believe Mr. Talbot was here. I cannot say that as a fact of my own knowledge; but I believe that at the time of these acquisitions he may have been acting in some capacity for American.

Q. You said that, in connection with the determination, no accurate basis existed for segregating the total in Account 100.5 according to nature. Did you go through the Company's files, or have them checked, the correspondence files, and all other files dealing with the acquisitions of the various properties?

A. Do you mean, to determine whether or not there was correspondence relating to these early acquisitions at the time?

Q. Whether there was correspondence, or whether or not there were any engineering reports or other types of reports, which might give you an indication of what was being bought, and why?

A. We attempted, of course, to get all of the information out of the existing records which we could. I personally have been through some of the old files, many of which do not exist now. We dug up all of the old engineering reports which we could and, as you know, all of the [830] audit reports and all the books of the old companies, and I believe we got all the information that was available in our records with respect to those acquisitions.

Q. Now, in connection with the acquisition of a property, a going electric property, the price paid may be a payment for tangible property only, or

(Testimony of Will T. Neill.)

for tangible and intangible property; isn't that correct? A. I believe so, yes.

Q. Now, with respect to the portion of the purchase price which can be attributed to physical property, is it fair to say, in your judgment, that the maximum amount attributable to physical property is the replacement cost of the property less depreciation?

A. Well, that is certainly an item that is important at the time of acquisition.

Q. Well, I am speaking, Mr. Neill, not of the over-all price; but I am trying to break down, if we can, an over-all price into its components into that which can be said to be attributable to the physical property, and that which can be said to be attributable to the intangible property acquired, and with respect to the physical property, that part of the purchase price which may be attributable to that, and that alone. Is it, in your judgment, fair to say that the maximum of a total purchase price which can be attributed, or attributable, to physical property, is the replacement cost of the [831] property, less depreciation?

A. Well, I think that is a good index of the physical element, yes.

Q. And, of course, in the replacement cost you would include—or I certainly would include, and I think you did—the fair market value of land?

A. Well, that goes without saying, in figuring replacement.

Q. Sure. Now, then, is it fair to say that any-

(Testimony of Will T. Neill.)

thing above that amount in a purchase price is a payment for intangible property?

A. Well, it is certainly a payment for what you might call intangible values. Of course, there are some questions of water rights and things like that come in—water right values. Those are intangible values, as I see it, speaking generally, in any situation as to the present and prospective values which may be in the particular situation.

Q. And among the intangible values that would be found in a purchase of an electric property would be such things as going value; is that right?

A. Yes.

Q. Good will? Does it include that, also?

A. Well, that is a term that is not very much used now. It is probably a part of the going value, as I understand it. [832]

Q. Franchise value?

A. Well, the whole thing is sort of a general value connected with the situation, depending upon what you are doing, tying it in to other properties, and so on. I think so far as my understanding of it is concerned, the statement we have in Revised Statement B,—

Trial Examiner: Exhibit 17, Mr. Slaff?

The Witness: Exhibit 17.

By Mr. Slaff:

Q. That would be at the bottom of the page?

A. Yes. Those are the things which, in my opinion, are involved in the intangible value at the time of acquisition.

(Testimony of Will T. Neill.)

Q. And all those types of intangible values, while it might be possible to segregate or pigeon-hole them, they all tend to merge?

A. I think so. I thought at one time that I would try to divide them up, and do a little speculating; but I found it would be highly speculative and an impractical thing to do.

Q. And they all tie in, do they not, with an evaluation the prospective purchaser makes of the prospective earning power of the situation?

A. I think they are all found in the situation. In any acquisition there are potential values coming about by [833] tying a property in with others to get greater efficiency in the use of the whole system and a better chance for development or rapid growth. We are speaking of intangibles, of course, and those elements are all taken into consideration.

Q. And those payments over and above the payments for the physical property, which represent generally the evaluation in the purchaser's mind of all those intangible elements which tend to merge and give the purchaser his appraisal of the prospective earnings of the properties, tie in, as it were, with the other properties operated, as the purchaser may conceive they should be operated in the future?

A. That is a part of it. Of course, some of the values have already been created in the development of the properties up to the time of acquisition.

(Testimony of Will T. Neill.)

tion. Going value is one of those. All of the pioneering effort and grief of the original developers of the property up to this point is given consideration; those are items which enter into the picture.

Q. Sure.

A. Without any particular evaluation as the amount of going value being,—

Q. Surely. Without any particular evaluation as to such elements as going value, which have already been created, those are elements of existing earning capacity rather than potential earning capacity? [834]

A. I don't know as to earning capacity; that comes into the whole picture, both present and future.

Q. You couldn't very well have any going value if you didn't have earnings, satisfactory earnings; isn't that so?

A. Of course that depends on conditions at the time as to why the earnings are low, as I see it.

Q. But, essentially, what you consider as going value and what you have spoken of as going value is the ability of the property to return a profit, in view of the fact that it is an established business, with its procedure established and with its trained personnel; those are elements which go into the business and the ability to earn a profit?

A. As I see it, the going value is made up of a lot of things that have been done in the development of the property to that time; it is now a mature thing which has come into being. The "bugs"

(Testimony of Will T. Neill.)

have been gotten out, and the operating procedure has been established; the personnel has been trained, and there has been a lot of work done, money spent in building the business, and so on; all of those things come into the picture when you speak of going value.

Q. As regards the difference between the original cost of the properties acquired by American and the cost to American, that difference was essentially, was it not, the payment by American for intangibles? [835]

A. Well, I think intangibles must have entered into it, yes.

Q. Now, concerning ourselves solely with the difference in the original cost of those properties and the cost to American, it is a fact, is it not, that that difference was essentially payment for intangibles?

A. Well, that is getting back to a long time ago. I don't have any idea, of course, what was in the minds of the acquirers of the property, and I don't, of course, know what the physical values of the properties were at the time of acquisition.

Q. There was an appraisal made, was there not, by J. G. White of the properties acquired by Pacific, at its inception?

A. There was an appraisal by J. G. White some time in 1910, I believe.

Q. And the appraisal was made as of the date of the organization of the Pacific, was it not?

(Testimony of Will T. Neill.)

A. I don't know as to the exact date, Mr. Slaff; it was in 1910; I do know that.

Q. Are you familiar with what that appraisal shows as to the reproduction costs or replacement costs of those properties acquired by Pacific, less depreciation?

A. No, I am not. I have seen the report; I have never read it completely. We have never done very much with [836] the White appraisal, because it did not appear to be in sufficient detail for our use; I mean, as we had to have the information later in connection with our property retirements and things of that kind.

Trial Examiner: Is this a good place for a recess?

Mr. Slaff: Yes.

Trial Examiner: We will recess for five minutes.

(Whereupon, a short recess was taken after which proceedings were resumed as follows:)

Trial Examiner: The hearing will be in order.

By Mr. Slaff:

Q. There was also an appraisal of the properties of Pacific made in 1912 by Mr. Hagenah, was there not? A. Yes.

Q. You prepared, did you not, and turned over to our staff a few days ago a tabulation headed "Pacific Power & Light Company Acquisition Adjustment Studies 1910 Acquisition"?

(Testimony of Will T. Neill.)

A. Yes, we did.

Q. Do you have it before you? A. Yes.

Q. It appears from that, does it not, that the estimated reproduction cost, less depreciation, at the time of the acquisition of the electric properties acquired from Columbia Power & Light Company was \$743,725; is that right?

A. Yes. For the purpose of this calculation we [S37] developed that figure in order to break down the acquisition adjustment on the basis of reproduction cost.

Q. Of the physical property?

A. Of the physical property—the estimated reproduction new of the physical property, less estimated depreciation. The reproduction costs new were taken as reproduction costs new as per the 1912 Hagenah appraisal, less the net additions from the time of acquisition to the time of appraisal, 1912. In order to get the figures we used the only information we had at that time as to estimated cost of reproduction close to the time of acquisition; and, of course, any estimate made at that time. I mean, for all the properties, on that basis, would be satisfactory for the development of the ratio.

Q. Well, what you did use were the two appraisals that actually had been made, the Hagenah 1912 for the purpose of determining reproduction cost new and the J. G. White appraisal for the purpose of determining the amount of depreciation of the properties at the time of acquisition?

(Testimony of Will T. Neill.)

A. Because we could not use the Hagenah appraisal, by itself, because it was at a later date, and we had to get added data.

Q. It was the Hagenah appraisal, less the net addition?

A. Of course there was an assumption that there might [838] be some error in that, but the whole purpose was to get a ratio for splitting down the acquisition adjustments which we calculated. Whether the basis from which you got your ratio was too high or too low would not change the ratio after you got it.

Q. These two appraisals were, so far as you can judge, the best information available in your records in respect to the reproduction costs or replacement costs, less depreciation—

A. (interposing) Those two appraisals are the only two appraisals that were available as to what may have been the reproduction cost new and depreciation as of those dates.

Q. The Columbia Power & Light property shows an estimated reproduction cost new, less depreciation, at date of acquisition, \$773,725, and the original cost of those properties is shown as \$723,889; is that correct?

A. That is right; over in Column 10.

Q. And the electric property of the Wasco Warehouse Milling Company, that is shown at, reproduction cost new less depreciation at date of acquisition, \$203,796, and the original cost, from your statement, \$230,740; is that correct?

(Testimony of Will T. Neill.)

A. And 45 cents; that is correct.

Q. Now, the Yakima-Pasco Power Company electric property is shown at reproduction cost new less depreciation, at date of acquisition, \$1,209,334; is that not correct? [839]

A. That is correct.

Q. And the original cost, from Statement B, \$1,248,565, is that correct?

A. That is correct.

Q. And, finally, the electric property that came from the Astoria Electric Company is shown, reproduction cost new less depreciation at date of acquisition, at \$222,462; and the original cost is shown at \$245,306; is that correct?

A. That is correct.

Q. And, roughly, I total those figures to make a total of \$2,409,000 for reproduction cost new, less depreciation, of the properties? Also, \$2,448,000 as original cost of the property?

A. I have not added them. It is somewhere close to those figures.

Q. And the amount paid by American over the original cost of those properties for the electric properties was \$1,581,000; is that right? On this basis that you use in this tabulation that we have been discussing?

A. Yes; that is shown in Column 11 of the tabulation.

Q. On Revised Statement B, page 47, Column 7, the excess over original cost, on the basis which

(Testimony of Will T. Neill.)

you use in your Revised Statement B, paid by American was \$1,332,086; is that right?

A. Against the electric properties. [840]

Q. Yes. That is correct, is it not?

A. Yes, that is correct.

Q. Now, in view of the fact that the reproduction costs of those properties, less depreciation, appear to be somewhat less than the original cost of those properties, wouldn't it be fair to say that the amount paid by American in excess of the original cost for those properties represented payment for intangibles? A. I should think so.

Q. And those amounts have remained in the balance sheets of your Company for something like 30 years now; that is correct, is it not?

A. Well, of course, I think some of those, through the methods in which we have retired our physical properties, as they have been disposed of and changed from time to time, perhaps have been retired on a basis higher than the original cost, has the effect of retiring some part of that original acquisition cost.

Q. That amounts, in total, to about \$100,000; perhaps a trifle less; is that correct; of your acquisition adjustment amount?

A. Of course, we have made no calculation, because it would be a very long calculation, to find out how much has been retired in excess of estimated original costs. You see, our retirements were made for many years on the basis of [841] esti-

(Testimony of Will T. Neill.)

mated values, based on some of these early appraisals, and it is our opinion, without having made the detailed calculation, that there has been some excess retired.

Q. Well, there is still, is there not, in your Plant Account, over \$1,200,000 of that original excess?

A. Well, according to page 47, of Revised Statement B, to reconcile adjustments to tie this original cost at the time of acquisition with various acquired properties, plus our recorded gross additions and recorded net additions, it indicates that the amount in this sheet, Column 5, amounts to \$138,485.84. I just don't know exactly what made that up, but that is the reconciling adjustment to tie into the more accurately determined costs as of December 31, 1936. That is the only indication we have of what happened on account of the various things we have done accountingwise in retiring properties since these properties were acquired. I will also state that by far the major part of the one million three is still in property—in the Plant Account.

Q. There are one or two other matters I want to call your attention to, Mr. Neill, and then we are through. In connection with Cause No. 6736 before the Washington Department of Public Service, I should like to ask you whether you testified as follows: When was that case before the Department? A. In 1935, I guess. [842]

(Testimony of Will T. Neill.)

Q. I will ask you whether you testified as follows, at pages 1188 and 1189 of the transcript (reading):

“However, a comprehensive examination of these records and those of predecessor companies by expert accountants retained by the Public Service Commission of Washington in the 1915 valuation and rate investigation, the results of which examination are a part of the formal record in that proceeding, disclosed the fact that for the electric property then owned by Pacific Power & Light Company in Washington and in Umatilla County, Oregon as of June 30, 1913, an actual expenditure of \$5,563,459.10, in cash or its equivalent, had been made for property purchased and subsequent additions and improvements.

“In determining this cost, no weight was given to the set up of the company’s securities at the time. The determined cost consisted of actual cash or its equivalent paid by American Power & Light Company, and actual cash paid by Pacific Power & Light Company to June 30, 1913 for acquisition of other properties and for construction of additions and improvements to its holding.”

Did you so testify?

A. I so did, if this is a substantially correct copy of the transcript. I don’t doubt it.

Q. I presume you can check that with the copy your Company has at the office, and, if it is incorrect, you will [843] so advise us, of course.

(Testimony of Will T. Neill.)

Another thing, in connection with that same case, did you also testify at page 1190 of that transcript:

“This figure does not include any allowances for working capital, going value or development cost or other intangible items. The actual cash cost of \$5,563,459.00 to the Pacific Company (and its affiliate American Power & Light Company) is therefore approximately \$1,345,000.00 in excess of starting figures employed by the Department and the company in the present case in making their estimate of the ‘Cost of Construction.’ This difference represents honest cash investment made in creating the electric system of the company as it stood on June 30, 1913, and should be taken into account in making any determination of value based on historical cost or prudent investment.”

Did you so testify?

A. I so testified.

Mr. Slaff: Now, one other thing, Mr. Laing, which I might address to you: Is there any question about the status of the Pacific Power & Light Company as a utility, as defined by the Federal Power Act?

Mr. Laing: Do you mean as to its being the owner of the facilities that are used for the interstate transmission of electricity?

Mr. Slaff: Yes. [844]

Mr. Laing: No.

Mr. Slaff: I take it, it is unnecessary, then, to

(Testimony of Will T. Neill.)

go into any testimony, either by Mr. Neill or any of our own witnesses, with respect to the physical characteristics of the property?

Mr. Laing: I think the maps that are in evidence show that we have interstate transmission lines at several points between the States of Washington and Oregon. [845]

JAMES H. FLYNN

called as a witness on behalf of the Commission having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Goldberg:

Q. Will you state your name for the record?

A. Mr. James H. Flynn.

Q. What is your profession?

A. I am an accountant.

Q. By whom are you employed?

A. By the Federal Power Commission in its Division of Original Cost.

Q. In what capacity are you so employed?

A. As a Chief Examiner of Accounts. [848]

Q. Did you participate in a field examination of the reclassification and original cost study submitted to the Commission by Pacific Power & Light Company?

A. I did. I was placed in charge of this examination on October 1, 1940.

(Testimony of James H. Flynn.)

Q. Did you initiate the field examination?

A. No. The field examination had been in progress for some time previously under the supervision of Mr. John J. O'Neil. I succeeded Mr. O'Neil, who was transferred to other duties.

Q. When was the field examination completed?

A. February 15, 1941.

Q. Where was this field examination made?

[851]

A. At the offices of Pacific Power & Light Company in the Public Service Building, Portland, Oregon.

Q. Did any other regulatory body participate in this examination.

A. Yes, the examination was made jointly by the staffs of the Federal Power Commission and the Public Utilities Commissioner of the State of Oregon. A study similar to the report filed with the Federal Power Commission had been filed by the company with the Public Utilities Commissioner of Oregon in accordance with that Commissioner's Order of September 26, 1938. The examination of these identical studies was made jointly and on a cooperative basis by the staffs of the respective Commissions.

Q. Now as a result of this field examination of the company's study of original cost, did you prepare a report to the Federal Power Commission?

A. As a result of the field examination, the staffs of the Federal Power Commission and the Public Utilities Commissioner of Oregon collabor-

(Testimony of James H. Flynn.)

ated in the preparation of a joint report. This report was based upon an examination of books, records, contracts and other documents made available for inspection by Pacific Power & Light Company, and a review of the files of the Public Utilities Commissioner of Oregon and the Department of Public Service of the State of Washington.

[852]

Q. I hand you a document entitled "Report on the Reclassification and Original Cost studies of Electric Plant as at January 1, 1937, Pacific Power & Light Company, Portland, Oregon", which report has been marked for identification as Exhibit No. 16, and I ask you whether it is the report you have just described.

A. Yes, this is the joint report resulting from the field examination, and contains the adjustments and recommendations of the respective Commissions' staffs. [853]

JOHN J. O'NEIL

called as a witness on behalf of the Commission, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Goldberg:

Q. Will you state your full name for the record, please? A. John J. O'Neil.

Q. What is your profession, Mr. O'Neil?

(Testimony of John J. O'Neil.)

A. I am an accountant.

Q. Are you employed by the Federal Power Commission in its Division of Original Cost?

A. I am.

Q. What position do you hold with the Federal Power Commission?

A. Chief Examiner of Accounts.

Q. How long have you been employed by the Federal Power Commission?

A. Since October 19, 1938, and from that date until September 1, 1939 my title was that of Principal Examiner of Accounts, and thereafter my title was that of Chief Examiner of Accounts.

Q. As a Chief Examiner of Accounts for the Federal Power Commission in its Division of Original Cost, what are [874] your duties?

A. Briefly, my duties consist of making and supervising field examinations of studies submitted by electric utilities relative to the reclassification of electric plant accounts pursuant to Electric Plant Instruction 2-D of the Uniform System of Accounts promulgated by the Federal Power Commission, and the orders of the same Commission adopted on May 11, 1937.

Q. Will you please state your professional training and practical experience in the accounting field?

A. I was graudated from grammar school in 1919, from St. James Academy in 1922, and from Pace Institute of Law and Accountancy in 1925. Thereafter, until August of 1926, I was employed in minor accounting and secretarial capacities.

(Testimony of John J. O'Neil.)

From August, 1926 until October, 1927, I was employed as an accountant on the staff of Clifford Yewdall, Certified Public Accountant, during which time I made or supervised a number of annual audits including the reports thereon. In October, 1927, I opened an office for the practice of public accounting, and between that date and January, 1928 I performed several audits and installed a number of bookkeeping systems for contractors. From January, 1928 until September, 1936, I was employed by New York Water Service Corporation, in the capacity of Chief Accountant. As such, I had complete supervision of all the [875] accounting records of nine separate utility companies, consisting of thirty-two operating plants. During this time, I made or supervised a number of original cost studies for the properties over which I had accounting jurisdiction. In September, 1936, as a result of competitive examination, I received the appointment of Senior Public Service Accountant from the Public Service Commission of the State of New York. As a result of further competitive examination, my title was subsequently changed to Associate Public Service Accountant. From September, 1936 until October, 1938, the period of my association with the Public Service Commission of the State of New York, I assisted in two major original cost examinations then being made by the Commission. Since October, 1938, I have been in the employ of the Federal Power Commission in the Division of Original Cost, and

(Testimony of John J. O'Neil.)

during that time, I have made or supervised twelve or more original cost field examinations.

Q. As Chief Examiner of Accounts for the Division of Original Cost of the Federal Power Commission, what was your association with the field examination of the reclassification and original cost studies of Pacific Power & Light Company?

A. I was first assigned to the field examination of Pacific Power & Light Company in July of 1940. Prior to that time, during the year 1939, an extensive examination of the company's estimated cost of construction schedules [876] had been made by the staffs of the Federal Power Commission and the Public Utilities Commissioner of the State of Oregon. During the latter part of 1939, the company, which up to that time had not as yet filed its report with the Federal Power Commission, decided to change its approach to the problem of reclassification. Therefore, in February of 1940, the staffs of the respective commissions suspended their field examination pending the submission of a report by the company. This report was finally submitted to the commissions on July 3, 1940, and on July 9, 1940, the staffs of the respective commissions resumed their field examination. I was in charge of the staff of the Federal Power Commission making the field examination until October 1, 1940. On that date, I was relieved by Mr. James H. Flynn, also a Chief Examiner of Accounts of the Division of Original Cost. Thereafter, I entered on duties of a general supervisory nature,

(Testimony of John J. O'Neil.)

during which time I kept closely in touch with the progress of the examination of Pacific Power & Light Company.

Q. Now with respect to the joint report of the staffs of the Federal Power Commission and the Public Utilities Commission of Oregon, which is Exhibit 16 in this case, did you participate in the preparation of that report?

A. The staffs of the respective commissions collaborated in the preparation of that joint report. I assisted materially in its preparation, concurred in its conclusions, [877] and signed that report.

Q. Have you heard the testimony of Mr. J. H. Flynn in this case with respect to the joint staff report? A. I have.

Q. And do you concur with the testimony as given by him? A. I do.

Q. Now with respect to the conclusions reached by the examiners as set forth in that joint report, it was recommended, was it not, that the company institute certain studies with respect to amounts established in Account 100.6, Electric Plant in Process of Reclassification, and in Account 107, Electric Plant Adjustments, so as to permit of proper reclassification, allocation and disposition of the amounts appearing therein? A. That is right.

Q. In conformity with those recommendations, the company has submitted in this case, a further study, which is Exhibit 17, has it not?

A. That is correct.

Q. Have you made an examination of the company's revised study? A. I have.

(Testimony of John J. O'Neil.)

Q. And when was this examination made?

A. The study was submitted to me at the company's [878] offices here in Portland during the week of September 22nd, immediately prior to this hearing. Since its receipt, it has been examined by members of the staffs of the Federal Power Commission and the Public Utilities Commissioner of Oregon.

Q. And as a result of such examination as has been made of the revised reclassification and original cost study of Pacific Power & Light Company, which has been submitted as Exhibit 17 in this proceeding, have you come to any conclusion with respect to its acceptability for purposes of original cost?

A. The studies which have been made by the company have assisted materially in clarifying numerous items, the reclassification of which was either impossible or obscure in the first study submitted. The results obtained from these studies substantiate the initial recommendation of the examiners that such studies be made. Basically, the company's revised studies contain a great deal of information which was not available to the examiners in previous field examinations. However, it is the opinion of the examiners that the information and data obtained by the company from these studies have not in all cases been properly applied or reclassified, with the result that it has been necessary to make further adjustments of the company's revised studies.

(Testimony of John J. O'Neil.)

Q. Have you prepared a statement of the adjustments [879] which it is believed are necessary to properly apply and reclassify the information and data obtained in the company's studies?

A. I have. I have prepared an exhibit which I have termed a "Reconciliation of Amended Reclassification Summary Statement of Commission Staffs with the Reclassification Summary Statement as Submitted by the Company."

Q. I show you a tabulation which is entitled "Reconciliation of Amended Reclassification Summary Statement of Commission Staffs with the Reclassification Summary Statement as Submitted by the Company", as of January 1, 1937, and ask you if that is the tabulation that you have just described as having been prepared by you?

A. It is.

Mr. Goldberg: I would like to have the tabulation marked with the next exhibit number, for identification.

Trial Examiner: It will be marked for identification as Exhibit No. 43.

(The document referred to was marked Exhibit No. 43 for identification.)

By Mr. Goldberg:

Q. Now, generally, what does Exhibit 43 purport to show, Mr. O'Neil?

A. Generally, the statement shows the reclassification by accounts as reflected in the summary statement [880] appearing in the company's revised original-cost study, page 47, the proposed adjust-

(Testimony of John J. O'Neil.)

ments of the commission staffs, and the adjusted reclassification. The purpose of this statement is to effect a reconciliation between the results shown in the company study and the results arrived at by the Commission staffs in such a manner as to clearly set forth the proposed adjustments, their nature, and the accounts to which they apply.

Q. Now, with specific reference to Exhibit 43, does the first line which you have indicated as "As Per Company Reclassification Summary Statement, Exhibit 17" show the amounts as they have been submitted in the company's revised original cost study? A. That is correct.

Q. And the amounts set forth on that line are in agreement with the summary of adjustments which the company claims are necessary to state as of January 1, 1937 the accounts prescribed in the Federal Power Commission Uniform System of Accounts as set forth in Statement E of the company's revised Exhibit 17; is that correct?

A. That is correct. The statement starts off with the same figures as appear in the company's revised Statement E.

Mr. Laing: May I interrupt a moment?

Mr. Goldberg: Surely.

Mr. Laing: In other words, the top line of Exhibit 43 [881] corresponds with the closing line on page 47, Exhibit 17, where all the figures are assembled in a grand total?

The Witness: That is correct.

(Testimony of John J. O'Neil.)

By Mr. Goldberg:

Q. Well, before taking up the question of the various adjustments, can the amounts adjusted be determined from the books of Pacific Power & Light Company?

A. No, they cannot. The adjustments relate primarily to costs incurred by American Power & Light Company or excess amounts paid to American Power & Light Company by Pacific.

Q. What is the reason for using costs appearing on the books of American Power & Light Company?

A. In order to properly explain that, it would be well to explain first the organization of Pacific Power & Light Company. That company was organized under the laws of the State of Maine on June 16, 1910 to take over certain properties which had previously been acquired by American Power & Light Company, the present parent company of Pacific Power & Light Company. American Power & Light Company has owned 100 percent of the common stock of Pacific Power & Light Company ever since the incorporation of the latter company in 1910. Prior to the formation of Pacific Power & Light Company, American Power & Light Company had acquired certain operating properties. The common stock of [882] Astoria Electric Company had been acquired from Electric Bond & Share Company, which organized and controlled American Power & Light Company. In April, 1910 American Power & Light Company had

(Testimony of John J. O'Neil.)

formed Columbia Power & Light Company to take over certain operating properties which it had acquired from the Northwestern Corporation. In March, 1910, American Power & Light Company had organized Yakima-Pasco Power Company to take over the electric, gas and water properties in the Yakima Valley which American had acquired from the Northwest Light & Water Company and the Yakima Valley Power Company. American Power & Light Company therefore owned and controlled Astoria Electric Company, Columbia Power & Light Company and Yakima-Pasco Power Company. In June 1910, American Power & Light Company caused Pacific Power & Light Company to be organized to take over the properties of these three wholly-owned companies. The transfer was effected as of July 1, 1910, and in exchange for these properties Pacific Power & Light Company issued to American Power & Light Company \$1,250,000 of preferred stock, \$3,200,000 of first and refunding mortgage bonds and \$5,997,000 of common stock. In addition to the properties of these three companies, Pacific Power & Light Company received \$499,500 par value of stock of Walla Walla Valley Railway Company. The securities issued by Pacific Power & Light Company represented the entire amount of securities then outstanding. It follows from the nature of [883] this transaction that there was no change in the ownership of the properties. American Power & Light Company owned and controlled the properties before trans-

(Testimony of John J. O'Neil.)

fer. Through the medium of complete common stock ownership, American Power & Light Company owned and controlled Pacific Power & Light Company after the transfer. The securities issued by Pacific Power & Light Company were in payment or reimbursement of the costs incurred by American Power & Light Company in the acquisition of the properties, in so far as such costs were incurred. In brief, the investment of American Power & Light Company with its attendant costs was transferred to the books of Pacific Power & Light Company. By the formation of a new corporation the miscellaneous investment costs of American Power & Light Company were consolidated into a single investment in Pacific Power & Light Company, and the various components of those investment costs were transferred to the books of Pacific Power & Light Company. It follows then that in order to properly segregate and reclassify the costs of the properties acquired by Pacific Power & Light Company upon inception that we must look to the records of American Power & Light Company in which these costs were first accumulated. This has been done. The costs to American Power & Light Company as a separate identity are no different than the costs to American Power & Light Company, owner of Pacific Power & Light Company. Pacific Power & Light Company is [884] but an account in the general ledger of American Power & Light Company, the costs of which have been analyzed and established on the

(Testimony of John J. O'Neil.)

books of that company. Securities have been substituted for the costs, but there has been no change in the costs. As a result, certain of the subsequent adjustments result from an analysis of system costs of the properties acquired.

Mr. Goldberg: May I suggest this is an appropriate time for recess?

Trial Examiner: All right. We will stand in recess for five minutes.

(Whereupon, a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner: The hearing will be in order.

By Mr. Goldberg:

Q. Have you examined the costs to American Power & Light Company of the properties transferred to Pacific Power & Light Company upon organization in 1910, which is Exhibit No. 37 in this case? A. I have.

Q. And have you prepared a summary of these costs in exhibit form? A. I have.

Q. I show you a tabulation entitled "Pacific Power & Light Company Analysis of Costs Incurred by American Power & Light Company in the 1910 transaction", and ask you if that [885] is the summary you had reference to? A. It is.

Mr. Goldberg: I would like to have this tabulation, Mr. Examiner, marked for identification with the next exhibit number.

Trial Examiner: It will be marked for identification as Exhibit 44.

(Testimony of John J. O'Neil.)

(The document referred to was marked Exhibit No. 44 for identification.)

By Mr. Goldberg:

Q. Directing your attention, Mr. O'Neil, to Exhibit No. 43, with respect to the adjustment of \$4,559.68, shown on the exhibit as representing organization expense, will you explain how that amount was arrived at?

A. Reference to the Exhibit No. 37 showing the costs to American Power & Light Company will indicate certain expenditures which have been construed by the examiners to represent proper organization expenses of Pacific Power & Light Company. They comprise four separate items as follows: Incorporation fees in the state of Maine, \$840.76; Legal Expenses in connection with incorporation, \$250.00; Miscellaneous Organization Expenses \$2,143.27; and Investigation and Organization Expenses \$2,416.36. Each of these items will be found listed individually on the statement of costs prepared by American Power & Light Company, Exhibit 37, on pages 6 and 7 thereof. [886] After further investigation, the examiners are of the opinion that these amounts should be allowed as cost of organization. These items aggregate \$5,650.39. Since an amount of \$1,090.71 had previously been set up in the staff report, and has been included by the company in Account 100.1, Electric Plant in Service, in its revised Exhibit F, it follows that an additional adjustment of \$4,559.68 is necessary.

(Testimony of John J. O'Neil.)

Q. And does that amount of \$4,559.68 appear anywhere on Exhibit 44?

A. That amount appears in Exhibit 44 under the column headed "Organization Expense of Pacific Power & Light Company."

Q. That is included in the amount of \$5,650.39, shown in that column? A. That is correct.

Q. In that connection, I note from Exhibit 43 that your adjustment contemplates the transfer of \$4,559.68 to Account 100.1, Electric Plant in Service, from Account 100.5, Electric Plant Acquisition Adjustments. Will you please explain why the transfer has been made from Account 100.5?

A. The necessity for this transfer from Account 100.5, Electric Plant Acquisition Adjustments, becomes apparent upon consideration of the procedures adopted by the company in the preparation of its revised exhibit 17. I refer specifically to page 47, Revised Statement B, of that exhibit. With the exception of the \$42,554.68 adjustment [887] of the Powerdale generating station, and certain predispositions of amounts to accounts 111, Investments in Associated Company, Account 140, Unamortized Debt Discount and Expense, Account 151, Capital Stock Expense, and Account 250, Retirement Reserve, the company has adopted a policy of establishing all other amounts in Account 100.5, irrespective of the applicability of certain provisions of the Uniform System of Accounts which require reclassification in other accounts. Therefore, a number of the adjustments found necessary by the ex-

(Testimony of John J. O'Neil.)

aminers to properly reclassify established amounts must be made through the medium of Account 100.5 wherein they have been classified by the company in its revised statements. This policy will become increasingly apparent in the explanation of subsequent adjustments.

Q. And this amount of \$4,559.68, which is now being transferred to Account 301 within Account 100.1, Electric Plant in Service, plus the amount of \$1,090.71, which was allowed in the staff report, Exhibit 16, and also included by the company in its revised Exhibit 17, will establish an amount of \$5,650.39 in Account 301, Organization Expense, is that correct?

Mr. Laing: May I interrupt?

Mr. Goldberg: Surely.

Mr. Laing: There is not a revised Exhibit 17. We have our revised statement in Exhibit 17. I don't want the [888] record to indicate there was a revised exhibit.

The Witness: I might have misread it. I was referring specifically to page 47 of Revised Statement B. I am sorry. I did mention a revised Exhibit 17.

Mr. Laing: Excuse me for interrupting.

By Mr. Goldberg:

Q. Will you go ahead and answer the last question?

A. That is correct, and that amount will be in agreement with the four items which I have enumerated and which appear individually on the state-

(Testimony of John J. O'Neil.)

ment of costs to American Power & Light Company. That is Exhibit 37.

Q. Referring to the next adjustment shown on Exhibit No. 43 which is in the amount of \$5,773.65 and which is labeled items of Debt Expense, will you explain that adjustment?

A. Reference to the analysis of costs to American Power & Light Company on page 6 of Exhibit No. 37 will indicate that certain items appearing therein represent expenses in connection with bonds issued by Pacific Power & Light Company to American Power & Light Company in 1910. These items are as follows:

Printing, \$1,933.65; Columbia Trust Company, \$500; Discount on American Power & Light Company 6 percent notes, \$1,800; and Legal Expense in connection with security issues, \$1,500. These items are shown individually on the statement of costs to American Power & Light Company. [889]

Q. I note that you have transferred this item to Account 140, Unamortized Debt Discount & Expense, in your columnar headings. In view of the provisions of Account 107, Electric Plant Adjustments, appearing in the Uniform System of Accounts, would it not be more proper to have made this transfer to Account 107?

A. This is true, and the method of treatment accorded the item on that exhibit is only for the purpose of first accumulating by columns the accounts to which amounts apply, instead of making all entries to Account 107 and subjecting that col-

(Testimony of John J. O'Neil.)

umn to a subsequent analysis. You will note that at the bottom of the exhibit, after making all proposed adjustments, the accounts which represent predispositions have been restored to Account 107 pending approval by the Commission of their disposition.

Q. Turning to your next adjustment, a transfer of \$161,500 from Account 100.5 to Account 150, Discount on Capital Stock. What about that?

A. As previously outlined, certain of the securities surrendered to American Power & Light Company by Pacific Power & Light Company in the 1910 transfer consisted of \$1,250,000 par value of preferred stock. This stock was sold by American Power & Light Company in various blocks on August 1, 1910, December 30, 1910 and January 31, 1911 and the proceeds realized amounted to \$1,088,500. It follows, therefore, that a [890] discount of \$161,500 was suffered in the sale of this stock and represents an amount properly includible in discount on capital stock. The examiners therefore propose to make this transfer, since the excess of securities over original cost is now stated at par value in the Account 100.5 column of the company's revised study.

Q. Does this amount of \$161,500 appear anywhere on Exhibit 44?

A. Yes, that amount of \$161,500 can be found under the column "Discount on Preferred Stock" second from the right.

Q. Now, will you explain the next adjustment

(Testimony of John J. O'Neil.)

with respect to the Walla Walla Valley Railway Company?

A. Included in Exhibit 37 in the statement of costs to American Power & Light Company are two minor items. One appearing on page 5 of Exhibit 37 in the amount of \$122.00, represents the cost of incorporating the Walla Walla Valley Railway Company. The other, also appearing on page 5 of Exhibit 37, in the amount of \$69.75, represents miscellaneous expenses in connection with the same company. The stock of the Walla Walla Valley Railway Company was transferred from American Power & Light Company to Pacific Power & Light Company in 1910, but was disposed of by Pacific Power & Light Company in 1921. These expenses should have been written off at the time of the sale. The expenses of incorporation [891] and miscellaneous expenses are therefore transferred to Account 107, Electric Plant Adjustments, for disposition.

Q. And the adjustment with respect to the Walla Walla Valley Railway Company appears in the last column of Exhibit 44; is that correct?

A. That is correct. [892]

By Mr. Goldberg:

Q. The next adjustment is entitled, "Excess of Amount paid by Pacific over Cost to American in 1910 Transfer", as a result of which you propose to transfer an amount of \$4,745,748.66 from Account 100.5 to Account 107. Will you explain that adjustment?

(Testimony of John J. O'Neil.)

A. The amount of \$4,745,748.66 represents the excess of the amount recorded in the plant account of Pacific Power & Light Company in 1910 over the cost to American Power & Light Company of acquiring these same properties. The amount is indicated mathematically by reference to the analysis of the statement of cost to American Power & Light Company which indicates total costs of property, including bonds and current positions, of \$6,154,254.34,—and that amount will appear on Exhibit 44——

While the amount established in the plant account of Pacific Power & Light Company, as evidenced by company Exhibit 17, statement B, page 47, was \$10,900,000. The difference between these two figures amounts to \$4,745,745.66 to which should be added \$3 representing three credits of \$1 each appearing on Exhibit 37, the statement of costs to American Power & Light Company, making the mathematical difference \$4,745,748.66, the amount of the adjustment. Essentially, then, this amount represents an excess over cost to American Power & Light Company recorded in the plant account of Pacific. [893]

I have previously reviewed the circumstances surrounding the organization of Pacific Power & Light Company and the then ownership by American Power & Light Company of the entire outstanding common stocks of Astoria Electric Company, Columbia Power & Light Company and Yakima-Pasco Power Company. In June of 1910, Pacific Power & Light

(Testimony of John J. O'Neil.)

Company took over the properties of the three companies. This was accomplished, not by a transfer of the stocks of the three companies, but by a transfer of the properties and current positions and the assumption of certain underlying bonds. For these properties and assets, Pacific Power & Light Company surrendered to American securities aggregating \$10,450,000. These securities consisted of \$1,-250,000 of Preferred Stock, \$3,200,000 of 1st and Refunding Mortgage Bonds, and \$6,000,000 of common stock.

Mr. Laing: Mr. O'Neill, may I interrupt you just a moment? In speaking of what Pacific took over, I think you inadvertently said it happened in June, 1910. That wasn't what you mean to say, was it?

The Witness: Make that July.

Mr. Laing: July, 1910?

The Witness: That is correct.

A. (Resumed) As I have pointed out previously that the cost of the properties to American Power & Light Company, as shown on Exhibit 44, amounted to \$6,154,254.34. [894] That amount, of course, includes the current positions and the bonds that were to be assumed. The actual expenditures made by American Power & Light Company to acquire the stocks of the three predecessor companies was only \$4,749,135.09, as evidenced by Exhibit 37 prepared by that company and submitted to the examiners through Pacific Power & Light Company. This latter amount represented the ac-

(Testimony of John J. O'Neil.)

tual investment of American Power & Light Company. By the formation of Pacific Power & Light Company, and the substitution of the securities of that company for those of the three predecessor companies, American Power & Light Company came into possession of \$10,450,000 par value of securities of Pacific Power & Light Company which represented a cost of only \$4,749,135.09, an excess of par value of securities over such cost of \$5,700,864.91. Subsequently, American Power & Light disposed of the \$1,250,000 par value of Pacific Preferred Stock on which it suffered a discount of \$161,500, and disposed of the \$3,200,000 of Pacific bonds on which it suffered a discount of \$448,616.25. The discounts suffered reduced the spread between par and cost to a spread as between the proceeds of the preferred stock and the bonds plus the par value of the common stock and the investment cost to American. The discounts of \$610,116.25 reduced the previous excess of \$5,700,864.91 to a figure of \$5,090,748.66. In 1921, to compensate for a loss suffered by Pacific Power & Light Company in the sale of the common [895] stock of Walla Walla Valley Railway Company, which was one of the assets originally surrendered in the 1910 transfer, American Power & Light Company donated \$345,000 par value of common stock back to the Pacific Company, reducing the excess to an amount of \$4,745,748.66, the amount of the examiners' present adjustment.

The adjustment may be reviewed in one further

(Testimony of John J. O'Neil.)

light. The initial investment of American Power & Light Company amounted to \$4,749,135.09. From the sale of the Pacific preferred stock it received proceeds of \$1,088,500; and from the sale of Pacific bonds it received \$2,751,383.75, a total of \$3,839,883.75. These receipts reduced American's investment to \$909,251.34 represented by \$5,655,000 par value of the common stock of Pacific Power & Light Company. This excess of \$4,745,748.66 is therefore attributable to the capitalization at par in the plant account of Pacific Power & Light Company \$5,655,000 of common stock which cost American Power & Light Company only \$909,251.34.

This excess is a portion of the difference between original cost and the recorded cost of plant on the books of Pacific Power & Light Company, and is so reflected in Exhibit 17, Revised Statement B, page 47 of the company's report. For proper reclassification of this item, reference is made to the test of Account 107, Electric Plant Adjustments, appearing on page 19 of the Federal Power Commission Uniform System [896] of Accounts, which reads as follows:

..This account shall include the difference between the original cost, estimated if not known, and the book cost of electric plant, at the effective date of this system of accounts, to the extent that such difference is not properly includible in Account 100.5, Electric Plant Acquisition Adjustments. Write-ups of electric

(Testimony of John J. O'Neil.)

plant prior to the effective date of this system of accounts shall be recorded herein."

"The amounts included in this account shall be classified in such manner as to show the nature of each amount included herein and shall be disposed of as the Commission may approve or direct."

In my opinion, the amount of \$4,745,748.66 is a writeup and should properly be classified in Account 107. It represents nothing more than the inflation of the plant account by the same owners. Bona fide cost can only be established between a willing buyer and a willing seller with a resulting change in ownership. There was no sale or purchase of property in 1910 unless a transfer of assets between two pockets of the same owner be so interpreted. Unless that cost be cost to the owner, it is, in the opinion of the examiners, a writeup.

Q. And now, the next adjustment on Exhibit No. 43 is a transfer of \$25,000 from Account 100.5 to Account 150, [897] Discount on Capital Stock. What does that adjustment represent?

A. On July 16, 1930, Pacific Power & Light Company entered into an agreement with American Power & Light Company which provided that Inland Power & Light Company, its wholly owned subsidiary, would sell and convey to Pacific Power & Light Company certain electric and other utility property, and that the Public Service Building in Portland, Oregon, held by Frank A. Reid, nominee of American Power & Light Company, would be

(Testimony of John J. O'Neil.)

sold and conveyed to Pacific Power & Light Company. The agreement, in addition to other provisions, provided for delivery to the Pacific Power & Light Company of all of the outstanding shares (except director's qualifying shares) of common stock of the Inland Power & Light Company, said stock having no par value. As a result of this transaction, the amount charged to the plant account of Pacific Power & Light Company amounted to \$8,156,972.43.

Without attempting to repeat again the opinions expressed previously in this testimony, it will suffice to say that this transaction in 1930 was, similar to the 1910 transfer, entirely between the same owners.

For the properties and stock received, as well as cash of some \$10,829,000, Pacific Power & Light Company issued to American Power & Light Company \$17,000,000 principal amount of First Mortgage and Prior Lien Bonds, 5,000 shares of no [898] par value preferred stock, and affected an exchange of 1,000,000 shares of no par value common stock for 57,550 shares of \$100 par value common stock. Subsequently, the 5,000 shares of preferred stock of a stated value of 500,000 were sold by American Power & Light Company for \$475,000, a discount of \$25,000. For the same reasons as outlined heretofore for the transfer of the amount of \$161,500 in the 1910 transaction, this \$25,000 has been transferred by the examiners to Account 150, Discount on Capital Stock.

(Testimony of John J. O'Neil.)

Q. Now, your next adjustment on Exhibit No. 43 is a transfer from Account 100.5 to Account 107, a credit amount of \$623,767.25 representing an excess of cost paid by American over the amount paid by Pacific. Will you please explain that adjustment ?

A. The reasoning behind this adjustment is exactly the same as that expressed for the 1910 transfer. In the 1930 transfer, the costs to American Power & Light Company were in excess of the amounts paid by Pacific Power & Light Company for the properties and Public Service Building. This is indicated by Exhibit 40, the statement of costs to American Power & Light Company of the properties transferred in the 1930 transaction. The total cost of cash and properties surrendered by American amounted to \$17,855,017.25. From the sale of the \$17,000,000 principal amount of Pacific bonds, American realized \$15,511,250.00. From the sale of the 5,000 [899] shares of Pacific preferred stock, American realized \$475,000. These proceeds reduced the investment of American Power & Light Company to a figure of \$1,868,767.25, for which it received common stock of Pacific Power & Light Company with a stated value of only \$1,245,000. Since the properties were capitalized on the books of Pacific Power & Light Company on the basis of the stated value of this stock, it follows that the properties were recorded on Pacific's books at \$623,767.25 less than the system cost. Therefore this

(Testimony of John J. O'Neil.)

amount becomes a difference between original cost and the recorded cost of plant on the books of Pacific Power & Light Company, and is so reflected in Exhibit 17, Revised Statement B, page 47 of the company's report. The difference in figures will be found to represent the \$25,000 stock discount which has not been set up in the company's statement, Exhibit 17.

In the opinion of the examiner, this amount of \$623,767.25 represents a write-down of the plant account by the same owners, and should be transferred to Account 107.

Q. The next adjustment has to do with the reinstatement of the Fruitvale canal in the amount of \$229,116.81 by transfer to Accounts 100.5 and 110. Will you explain that transaction?

A. The examiners have accepted the amount of \$188,136.86 as representing the amount applicable to the Fruitvale canal, previously retired, and now being restored [900] to service within Account 110., Other Physical Property. The adjustment is made as a matter of principle. The company, in its revised Exhibit 17, has credited this amount back against the reserve for depreciation. The amount retired in 1932 was an estimated amount of \$229,166.81. The company, of course, should have reversed the original retirement in its entirety and reflected the difference between that amount and the adjusted cost of \$188,136.86 in Account 100.5. The examiners' adjustment reverses the credit of \$229,166.81 to Account 107, Electric Plant Adjustments,

(Testimony of John J. O'Neil.)

pending approval by the Commission for its disposition, establishes the adjusted cost in Account 110, Other Physical Property, and places the original excess retirement in Account 100.5.

Q. And the next adjustment on Exhibit 43 relates to unrecorded retirements of non-electric properties in the amount of \$612,013.78, which you are restoring to Account 108, Other Utility Plant. Will you tell us the reason for that adjustment, please?

A. Well, my answer to that would be the same as that given in the previous answer. The amount represents unrecorded retirements of non-electric properties which the Company, in its revised Exhibit 17, has written off against the Reserve for Depreciation. I have restored it to an adjustment account within Account 108, Other Utility Plant, pending approval of the Commission for its disposition. [901]

Q. And would the same be true of the amounts in Account 111, Investment in Associated Companies; Account 140, Unamortized Debt Discount and Expense; Account 151, Capital Stock Expense; and and Account 150, Discount on Capital Stock?

A. That is true. The amounts are acceptable, but the examiners are restoring them to Account 107 until such time as the Commission may approve or direct their disposition.

Q. And the figures which you show at the bottom of the statement on Exhibit No. 43, "as per Commission Staffs" now represent the adjusted figures of the staffs of the Federal Power Commis-

(Testimony of John J. O'Neil.)

sion and the Public Utilities Commissioner of Oregon: is that correct?

A. That is correct.

Mr. Laing: May I interrupt just a moment?

Mr. Goldberg: Yes.

Mr. Laing: It occurs to me, Mr. O'Neill that in your reference to the Fruitvale canal as to what account that Fruitvale canal should be placed in,—that is, restored to its proper status, that you referred to both Account 108, which is Other Utility Plant, and Account 110, Other Physical Property. My impression is that you probably intended to refer in both of those cases, wherever that came up, to Account 110, did you not?

The Witness: That is correct, 110, Other Physical property. [902]

Mr. Laing: Account 108 is not involved in that particular piece of property?

The Witness: That is correct, Mr. Laing.

By Mr. Goldberg:

Q. Have you prepared, Mr. O'Neil, an amended reclassification summary statement reflecting these additional adjustments? A. I have.

Q. I show you a tabulation entitled, "Pacific Power & Light Company, Amended Reclassification Summary Statement Reflecting Adjustments of the Staffs of the Federal Power Commission and Public Utilities Commissioner of Oregon". and ask you if that is the statement you have just referred to?

A. It is.

Mr. Goldberg: May I have this statement marked

(Testimony of John J. O'Neil.)

for identification with the next exhibit number, Mr. Examiner?

Trial Examiner: It will be marked for identification Exhibit No. 45.

(The Document Referred to Was Marked Exhibit No. 45 for Identification.)

By Mr. Goldberg:

Q. Do you have any explanation you wish to make with respect to that Exhibit No. 45, Mr. O'Neil?

A. It would be well to make two or three explanatory comments with respect to that exhibit. The first column [903] which is headed "As per staffs' report Exhibit 16" is taken directly from Schedules II and III appearing on pages 22 and 42, respectively, of that report, and represents the company's reclassification and original cost study as first adjusted by the staffs in their report which is Exhibit 16 in this case.

Column two, which is headed "Additional Proposed Adjustments", represents the adjustments made by the Commission staffs as a result of the studies made by the Company in accordance with the recommendations made in the staff report.

Column three, which is headed "As Adjusted" now represents the adjusted figures of the staffs of the Federal Power Commission and the Public Utilities Commissioner of Oregon.

With respect to Account 100.1, Electric Plant in Service, there has been added the \$4,559.68 of additional organization expenses. No changes were necessary in Account 100.2, Electric Plant Leased to

(Testimony of John J. O'Neil.)

Others, or Account 100.3, Construction Work in Progress. There has been established in Account 100.5, Electric Plant Acquisition Adjustments, an amount of \$2,741,591.66. Account 107 has been adjusted to an amount of \$6,420,800.61.

With respect to Account 108, Other Utility Plant, there has been established in that account an amount of \$200,812.34 which represents the estimated original cost of the Prineville water system, the Kennewick water system, and the Yakima steam heating system. That amount is in agreement with the amounts [904] submitted by the company.

With respect to the amount of \$7,888.76 established in the Other Utility Plant Acquisition Adjustment Account, that represents the portion of the 1910 acquisition adjustment applicable to the Kennewick water system, which is still in service.

The amount of \$612,013.78 which has been established in the Other Utility Plant Adjustment Account represents unrecorded retirements of non-electric properties as determined by the Company.

The amount of \$2,468,068.52 established in Account 110, Other Physical Property, is in agreement with the amount submitted by the Company.

Q. With respect to the amount of \$2,741,591.66 which you have established in Account 100.5, Electric Plant Acquisition Adjustments, have you prepared an analysis showing the various acquisitions to which this amount applies?

A. I have. This analysis has been prepared in such manner as to indicate not only the analysis of

(Testimony of John J. O'Neil.)

the amount of \$2,741,591.66, but also the application of each of the examiners' adjustments to the amounts as originally established in Account 100.5, Electric Plant Acquisition Adjustments, by the Company.

Q. I show you a tabulation entitled, "Pacific Power & Light Company, Analysis of Account 100.5, Electric Plant [905] Acquisition Adjustments, January 1, 1937," and ask you if that is the statement you have just described?

A. That is correct.

Q. You prepared that statement? A. I did.

Mr. Goldberg: I would like to have the tabulation just described, marked for identification with the next exhibit number, Mr. Examiner.

Trial Examiner: It will be marked for identification Exhibit No. 46.

(The Document Referred to Was Marked Exhibit No. 46 for Identification.)

By Mr. Goldberg:

Q. Now, with respect to the amount which you have established in Account 107, of \$6,420,800.61, have you prepared an analysis of that account?

A. Yes, I have. The analysis has been prepared in such manner as to show the nature of each item in that account and the amount.

Q. I show you a statement entitled, "Pacific Power & Light Company, Analysis of Account 107, Electric Plant Adjustments, as Adjusted by Commission Staff," and ask you if that is a statement

(Testimony of John J. O'Neil.)

you prepared and to which you have just referred?

A. That is correct. [906]

Mr. Goldberg: Mr. Examiner, I ask that this statement be marked for identification as the next exhibit number.

Trial Examiner: It will be marked for identification Exhibit No. 47.

(The Document Referred to Was Marked Exhibit No. 47 for Identification.)

By Mr. Goldberg:

Q. Mr. O'Neil, will you please turn to Exhibit 17, Revised Statement B, page 39. Do you have that page? A. I have.

Q. You will notice the following statement at the top of that page, the first full paragraph:

"The original cost of the distribution system obtained from the City of Ione for the purposes of this statement is assumed to be \$3,526.71, the cost of the system to the Sherman Electric Company."

Have you accepted the amount of \$3,526.71 as the estimated original cost of this distribution system? A. I have, yes.

Q. And what is your reason for accepting this purchase cost as the estimated original cost?

A. There are no other records or figures available to ascertain more accurately the original cost. Therefore, the purchase cost has been accepted as the closest approximation of the original cost. If records were available showing [907] the original

(Testimony of John J. O'Neil.)

cost of this property, purchase cost would not be acceptable, and the original cost would have been used.

Q. Mr. O'Neil, do you have any other comment to make with respect to these statements or the Company's revised Exhibit 17?

A. Yes, there is one thing I would like to say. The company, in its restudy of acquisition, has made certain allocations of the difference between the determined original cost and the cost to American as between electric utility and non-electric utility properties. The staff, upon examination of the Company's allocation, deemed it to be arbitrary and proceeded to make other allocation studies on the basis of earnings, reproduction cost new, reproduction cost new less depreciation, and original cost. After considering all of the various allocation methods, the staff is of the opinion that the results of the Company's study represent a reasonable allocation of the acquisition adjustments, and although we are not in accord with the method used, the results thereof can be accepted.

Mr. Goldberg: That is all we have of Mr. O'Neil, Mr. Examiner, and at this time I would like to offer in evidence Exhibits numbers, marked for identification, as Exhibit Nos. 43, 44, 45, 46, and 47.

Mr. Laing: There is no objection.

Trial Examiner: Very well. Exhibits 43 to 47, inclu- [908] sive, will be received.

(Exhibit Nos. 43, 44, 45, 46 and 47 were received in evidence.) [909]

HEARING EXHIBIT No. 44

PACIFIC POWER & LIGHT COMPANY

ANALYSIS OF COSTS INCURRED BY AMERICAN POWER & LIGHT CO. IN 1910 TRANSACTION

	Total	Columbia Power & Light Company	Yakima-Pasco Power Company	Astoria Electric Company	Wasco-Whar. Milling Company	Yakima Land	General	Organisation of Pacific Power & Light	Interest Accd. By American P & L Co.	Debt Dist. and Expense	Dist. on Preferred Stock	Walla-Walla Valley Railway Co.
Direct Purchase Costs.....	\$4,542,872.94	\$1,792,540.89	\$2,106,632.05	\$340,000.00	\$300,000.00	\$3,700.00	\$	\$	\$	\$	\$	\$
Bonds Assumed	967,000.00	607,000.00	210,000.00	150,000.00								
Current Position	(14,500.00)	(29,147.07)	23,000.26	(8,353.19)								
Walla Walla Valley Ry Co. Stock.....	(154,500.00)	(154,500.00)										
Purchase Costs	\$5,340,872.94	\$2,215,893.82	\$2,393,632.31	\$481,646.81	\$300,000.00	\$3,700.00						
Other Acquisition Costs.....	136,746.40	10,503.27	2,495.17	3,564.23	1,340.00		118,842.41					
Allocation of General Costs.....	—	54,668.00	57,044.00		7,130.00		(118,842.41)					
Miscellaneous Costs	676,635.00							5,650.39	54,942.96	454,349.90	161,500.00	191.75
Total Cost to A. P. & L. Co.....	\$6,154,254.34	\$2,281,065.09	\$2,399,171.48	\$485,211.04	\$308,471.73	\$3,700.00	\$	\$5,650.39	\$54,942.96	\$454,349.90	\$161,500.00	\$ 191.75

HEARING EXHIBIT No. 46

PACIFIC POWER & LIGHT COMPANY

ANALYSIS OF ACCOUNT 100.5, ELECTRIC PLANT ACQUISITION ADJUSTMENTS

JANUARY 1, 1937

	As per Company Reclassification Sum- mary Statement	Organization Expense Trans- ferred to Acct. 100.1	Debt Expense Trans- ferred to Acct. 107	Discount on Preferred Stock Trans- ferred to Acct. 107	Excess of Amount Paid by Pacific Over Parent Co. Cost Trans- ferred to Acct. 107	Expense of Walla Walla Ry. Transferred to Acct. 107	Adjustment of Excess Retirement of Fruitvale Canal Property	As Adjusted by Commission Staffs
Columbia Power & Light Company, Yakima-Pasco Power Company and Astoria Electric Company....	\$6,239,335.19	(\$ 4,559.68)	(\$ 5,733.65)	(\$161,500.00)	(\$1,745,748.66)	(\$ 191.75)		\$1,321,601.45
Husum Power Company.....	23,759.81							23,759.81
Prosser Power Company and Prosser Water Company	5,738.56							5,738.56
Klickitat Light & Power Company.....	1,080.35							1,080.35
Hood River Light & Power Company.....	164,979.19							164,979.19
Tucannon Power Company.....	39,260.64							39,260.64
Dayton Electric Company.....	40,648.17							40,648.17
Waitsburg Electric Light Company.....	(5,873.41)							(5,873.41)
Reservation Electric Company.....	9,158.42							9,158.42
Hydro Electric Company.....	115,718.63							115,718.63
Seaside Light & Power Company.....	21,683.76							21,683.76
Gearhart Park Company.....	77.60							77.60
Cannon Beach Electric Company.....	1,512.62							1,512.62
Inland Power & Light Properties.....	486,744.98			(25,000.00)	623,767.25			1,085,512.23
Connell Power & Light Company.....	12.26							12.26
Misc. Acquisition Costs.....	14,177.27							14,177.27
Retirement Adjustments	(138,485.84)						\$41,029.95	(97,455.89)
Totals.....	\$7,019,528.20	(\$ 4,559.68)	(\$ 5,733.65)	(\$186,500.00)	(\$1,121,981.41)	(\$ 191.75)	\$41,029.95	\$2,741,591.66

Mr. Laing: There are two or three questions on redirect that I wanted to ask Mr. Neill, and I thought this would be a better place to get that out of the way, before I go ahead with the cross examination.

Whereupon,

WILL T. NEILL

called as a witness on behalf of the Pacific Power & Light Company, having been previously sworn, resumed the stand and testified further as follows:

Redirect Examination

By Mr. Laing:

Q. Mr. Neill, in the course of your cross examination by Mr. Slaff, you were asked some questions about the usability of this Uniform System of Accounts to a practical operating man, and your opinion concerning the use of this [911] System of Accounts as reflecting the cost of the utility properties to the person who first applied the property to utility use, and you discussed that at some length with Mr. Slaff.

I would like to ask you whether your comments in response to his questions comprehended all your objections to this Uniform System of Accounts as it is being applied and interpreted by the Commission?

A. As I understood Mr. Slaff's questions at the time, and as they appear to me now after reading the transcript, the questions and answers were ad-

(Testimony of Will T. Neill.)

dressed to the practical usability from an operating standpoint of that part of the classification which operating men have to deal with; to the possible value to operating men and others of information as to cost to the first persons to apply the property to utility use; and to the possibility of reasonable differences of opinion between the Commission's staff and myself as to the manner in which the System of Accounts should be interpreted. These questions did not cover the whole scope of the situation as I see it—and at all events they do not cover what in my judgment is the most serious objection to the System of Accounts as interpreted and applied by the Commission.

Q. What is the most serious objection you have in mind, Mr. Neill? [912]

A. The most serious objection to the System of Accounts as interpreted and applied by the Commission, as indicated by its definitions under Accounts 100.5 and 107, and by its show cause order in this present case, and by rulings it has made elsewhere, is its apparently definite determination to employ what we in the utility industry have called the "aboriginal cost" or the cost to the first person to apply the property to utility use as a basis for ordering the writing off of amounts from the plant accounts of utility, without giving any consideration to the value of the properties which are included in the plant accounts.

I do not pretend to be an accountant or a lawyer,

(Testimony of Will T. Neill.)

but it seems to me that this is arbitrary, especially when applied retroactively as the Commission has indicated its intention to apply it, and in my judgment is beyond the reasonable scope or purpose of any system of accounts. [913]

Mr. Laing: I think that is all the questions I have of Mr. Neill.

Recross Examination

By Mr. Slaff:

Q. I have a few questions that I would like to ask at this point. [926]

Q. Now in connection with the questions which Mr. Laing has asked you at the very outset, you said, as I recollect, paraphrasing what he said, that the most serious objection to the System of Accounts as interpreted and applied by the Commission was the apparent definite determination to employ what you call "aboriginal costs" as the basis of ordering the writeoff of amounts on the balance sheet, without giving consideration to present values which exist in the property.

Now, in the first place, that is essentially a financial matter rather than an operating matter, is it not?

A. Yes, I should say that is financial and legal.

Q. You will recollect, Mr. Neill, when I put to you [927] some problems at pages 649 and 650 which dealt with the possibility, to illustrate the principle, of the creation of Pacific Power & Light Company No. 2 by American to take over the assets of the present Pacific Company, that is, to assume a deter-

(Testimony of Will T. Neill.)

mined fair value of some \$6,000,000 in excess of the amount now on the books of Pacific, and I asked you if you approved such a transaction, and what your views were with respect to such a transaction, and you answered at page 650:

“Well, I really don’t feel capable of answering the question, because of my lack of knowledge of all the factors involved.”

And then, continuing, on page 651:

“Q. Do you mean that the answer which you would give after reflection on the problem would be valueless to us and to the Commission in arriving at a conclusion with reference to the problem that confronts us in this case?

“A. I very definitely feel that, having had no experience in financial matters of that kind, I cannot answer the question.”

And then when the question was repeated in somewhat different form, but containing the same substance, on page 652, you stated:

“That is the part of the question I don’t feel capable of answering. I would be glad to, if I knew. But that situation, as I see it, in so far as my part of it is concerned, [928] would require careful study and consultation with somebody that was expert on these matters, both as to their actual operation and with respect to the regulations that pertain to it, and all other phases of it. I am trying to answer the questions the best way I can, and I am not trying to avoid it.”

Now, is there anything that distinguishes the na-

(Testimony of Will T. Neill.)

ture of this question that I put to you and the question that Mr. Laing put to you?

A. The thing I wanted to clear up in this particular question that Mr. Laing asked me and my answer concerning the matter which we had discussed, is that when we were discussing the classification the other day, it was my understanding at that time that we were discussing it—at least I was making my answers on the basis of my conclusions as to the reclassification on the operating use of the classifications. I didn't want that misunderstood.

Q. Then, as I understood you in your answer to Mr. Laing this morning, you went beyond that phase of that use of the System and said, as I gathered, as a financial matter you considered that the Commission's apparent determination to order writeoffs or writeups because of the present value is arbitrary: is that what you meant to say? Is that your position?

A. As I see it, of course, the refusal or failure [929] of the Commission to take into account the present value of the property in any disposition that is made of it seems to me to be arbitrary. It even seems to me to be that, although, as I say, I am not a financial man or a lawyer; it has always seemed to me that the value of an asset should be given consideration.

Q. Has it always seemed to you that the present value of an asset should be recorded on the balance sheet of the accounting company?

(Testimony of Will T. Neill.)

A. No, I don't think that is right.

Q. Isn't that essentially the problem with which we are concerned here, as to what should appear on the balance sheet of a company?

A. Well, I think that is the question, as to what is on the balance sheet and what is to be taken off; and when we come down to the final disposition, that is——

Q. (interposing) You certainly do not recommend or countenance changing the balance sheet in accordance with changes in value of the property reflected on the balance sheet?

A. Well, there again we are coming into the financial phase of it.

Q. Mr. Neill, I was very glad to have us get away from this the other day, but apparently we are back into it. The other day you stated you were not an expert on any of [930] these matters, but, unfortunately, you have raised the question again this morning, so I am compelled to pursue it a little bit further with you.

A. Well, I still feel that I am not able to go into all the phases of what should or should not be done on the balance sheet.

Q. Well, let us put it this way, in a somewhat different form: You disagree and have, from your point of view, an honest and reasonable disagreement and difference of view with the Commission, as you interpret the Commission's action as to the matter of disposition of writeups and similar mat-

(Testimony of Will T. Neill.)

ters, and as to how they should be handled? Is that correct?

A. Just from my point of view it seems to me that the whole consideration of that, I might say, from purely a layman's point of view should not ignore the assets; that is, the assets should be considered; that is without respect to the legal concepts or the principles of fundamental accounting, with which I am not familiar.

Q. That statement as to your point of view is thoroughly understandable. Now, I want to take you through the next step and discuss what you have stated, and ask you to reflect on it; do you consider the Commission's difference in point of view and approach to the problem and ultimate treatment of the problem as you treated it, is arbitrary? Do you consider that is an arbitrary action by the Commission? [931]

A. Well, it seems to me, as I see it, from my point of view as an operating man, that the failure or refusal of the Commission to consider what the values are today, regardless of what disposition may be made after that, is arbitrary.

Q. When you say the failure of the Commission to consider the values, are you confining yourself solely to the balance sheet disposition of these writeups and staying out of the field of these present values, which might be considered for other purposes, such as rate-making, or whatnot?

A. Well, as I see it, so far as the classification—I was not trying to speak as an expert on financial

(Testimony of Will T. Neill.)

matters. I have been trying to make a distinction that, so far as the classification is concerned itself, and taking what is on it and pigeonholing it, as I see it, there is no serious question about that. I might not think it is right in some details. But as to this other question, after having gotten some of these things in the pigeonholes, what are you going to do with them, without giving consideration to all the ultimate elements of value; if you are going to do that, without giving any consideration to these elements of value, that seems somewhat arbitrary. But, again, it comes down to a question of law on that particular point.

Q. You can recognize, can you not, the Commission's approach to this problem, or what you conceive to be the [932] Commission's approach to this problem as a serious and reasoned effort, although you may disagree with it—as a serious and reasoned effort to arrive at a desirable end?

A. Well, it just does not seem right to me. As I say, I am not a lawyer or a financial man, but it does not seem right to me not to take into consideration at the time all the facts which may be available as to values today. What is done after that is taken into consideration as a matter of law, I presume.

Q. Well, let us explore that for just a minute, because I am interested in getting your approach to it. Suppose you, today, were in charge of a utility which was not regulated by a regulatory commis-

(Testimony of Will T. Neill.)

sion, and not regulated by the Federal Power Commission, and the plant had an out-and-out writeup on the books, as you have defined a writeup; and let us suppose that that writeup had been placed on the books a year ago; and then you come under the jurisdiction of the Federal Power Commission this year, and you are ordered to reclassify your properties; supposing further that in the past year the value of your properties, just in that one year, had caught up with the writeup that you originally disapproved of; would you say that it was an arbitrary action on the part of the regulatory body to order the writeup removed from your books and disposed of without considering the fact that, in the last year, your so-called value of the [933] property had caught up with that writeup? Do you get the sense of that question, Mr. Neill?

A. That is just a little bit involved, as to how we started.

(Thereupon, the question referred to was read aloud by the reporter as above recorded.)

Q. We just started out last year with a company that was outside of regulation, outside of state regulation and outside of the Federal Power Commission regulation, and last year the plant had an out-and-out writeup put on the books of the company.

Trial Examiner: I think it is important, Mr. Slaff, that the writeup be confined to what Mr. Neill's previous definition was as to writeup.

(Testimony of Will T. Neill.)

Mr. Slaff: Sure. Just the way he defined "writeup".

By Mr. Slaff:

Q. Say, within the next year you come within the Federal Power Commission's regulation, and within that year the values have caught up with the writeups; do you think it would be arbitrary on the part of the Federal Power Commission to order that writeup written off of the books of the Company without considering the fact that in the last year the values, so-called, had caught up with the writeup?

A. Well, it seems to me that it would; that is the way it appears to me, if I understand the situation. [934]

Q. Well then, in effect, Mr. Neill, aren't you backtracking on your original position saying that you can't justify an out-and-out writeup, as you yourself defined "writeup", so long as subsequent to that writeup, values, so-called, catch up with the writeup?

A. As I say, I am not an expert accountant nor a lawyer. I don't know what the proper thing to do is, but it seems to me the fact that the value is there should be given consideration. That is about as far as I can go.

Q. Let me take up this situation then. You have got a certain amount written on the books at original cost, today, and yet, today, you find that you have two million dollars more value there than

(Testimony of Will T. Neill.)

that cost; why don't you approve the writeup on the books to your value?

A. Well, that is getting into a field where I don't have the knowledge.

Q. That is the sort of transaction, Mr. Neill, that you said, as I recollect your testimony, you did not approve; that is correct, isn't it?

A. Well, I think, from my present knowledge, probably I have said that. As I say, we are getting into a field of finance and accounting that I don't feel myself competent to handle.

Q. What I am trying to get at is how, if you don't approve of that type of transaction, you can consider it [935] arbitrary by a regulatory commission to order that transaction corrected?

A. Well, I tried to explain awhile ago, from my point of view, just the—of course, the legal concept is involved, the refusal of the Commission to consider the facts at all is the thing that seemed to me to be arbitrary.

Q. Let us put it another way: Suppose the Commission assumed that the so-called value existed but, nevertheless, determined that the balance sheet should be stated at cost, the arbitrary write-up disposed of, and written off; would you consider that arbitrary?

A. After they have given consideration to the values?

Q. Sure. The Commission has assumed that the statement of existing values is as made and that existing values have caught up with the writeup.

(Testimony of Will T. Neill.)

but, nevertheless, the Commission comes to the conclusion that the balance sheet should not show the writeup, and the writeup should be disposed of.

A. Well, I think that, again, whether we use the term "arbitrary" or something else is something that comes down to a question of law on the subject and, of course, I am not a lawyer.

Q. Well, of course, you are the one who brought in the word again, "arbitrary"; you said you considered some things as arbitrary. I stated that I can understand your [936] approach, and that you have reasonable grounds, from your point of view, to differ in such cases from regulatory bodies; but I think it important to determine whether you conclude that such action by the regulatory commission is or can be considered properly as arbitrary.

A. Well, I don't know whether I can explain my feeling any better than I have; it just looks to me that it doesn't seem right when you do not give full consideration to present value; from that point on I think it becomes a point of law.

Q. Well, my last hypothesis, Mr. Neill, was assuming that the Commission had considered the present value.

A. I understand that.

Q. And had come to the conclusion that the present values were as represented, but, nevertheless, had come to a conclusion that sound accounting requires that the balance sheet be on a cost rather than on a present value basis. You couldn't very well call that arbitrary, could you?

(Testimony of Will T. Neill.)

A. It might not be arbitrary, assuming that the Commission comes to that conclusion; as I say, from that point, regardless of what you term it, it is a matter of law on that particular subject.

Q. Well, is it fair, Mr. Neill, to summarize that, in part, by saying, or by considering what you have told us, with your limitations with respect to financial matters, that you are not a lawyer, but just a good operating man,— [937] even though you modestly cavil at that term “good”—that the action of the Commission in such a situation such as we have been discussing is arbitrary? Would you say it is or is not arbitrary?

A. I think, to the extent that I have tried to explain my personal view about it, it would be. To go any further than that would be, as I stated, going into the field of law or accounting. I don't see that I can do much more with it.

Mr. Slaff: I guess that is all. [938]

JOHN J. O'NEIL

called as a witness on behalf of the Commission, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination

By Mr. Laing: [939]

Q. I would like to have you point out generally, Mr. O'Neil, dealing with your Exhibit 43 and the grouping at the next to the last line of these accounts

(Testimony of John J. O'Neil.)

which you are clearing through 107,—from the standpoint of presenting the information to the Commission, does not the presentation of reclassification statements in the form submitted by the Company give the Commission all of this information in identifiable form just as clearly as it would or as you have done it by clearing the amounts through Account 107?

A. That is probably true, Mr. Laing. The only exception that I could make to your statement would be this, that by the inclusion of those items in 107, as provided by the account, the same information which was given by your Company in showing them in the other balance sheet accounts on, for instance, Statement E of your report, could also have been accomplished in your Statement H where you dispose of 107 by indicating in Statement H the account to which you evidently intended to dispose of items in 107.

Q. But there is no objection to the presentation [940] in the form that the Company presented it, is there?

A. Oh, I don't believe there is any objection as far as the amounts were concerned. It is merely a matter of passing them through 107.

Mr. Laing: I might say also at this point that we have no criticism of any computations made in any of Mr. O'Neil's exhibits as to the figures used as a basis for the calculations. We have not noted any discrepancies in the figures and have no reason to quarrel with any of the computations mathe-

(Testimony of John J. O'Neil.)

matically. Our differences will be only as to the premises or assumptions on which they may be based.

By Mr. Laing:

Q. I wish you would refer to the transcript. I will see if I can find the place. Beginning at page 883, line 23, there are two sentences there I would like to refer to first. After referring in the general introductory statement to the organization of the Pacific Power & Light Company in 1910 you go on as follows, which I quote:

“The securities issued by Pacific Power & Light Company represented the entire amount of securities then outstanding. It follows from the nature of this transaction that there was no change in the ownership of the properties.”

Now, am I to understand or are we to understand when you make that statement that you are referring to the exact [941] moment of the transfer of the properties to the Pacific and the issuance of the securities back to American, when you say there was no change in the ownership of the property? As of what moment of time are you speaking?

A. Well, I say that the transaction itself effected no change in the ownership of that other property. By that I mean that the transaction of itself did not effect a change in the ownership of the property.

Q. You mean at the moment when that took place?

A. At the moment or subsequently or prior.

Q. Do you make any distinction—I don't want to

(Testimony of John J. O'Neil.)

be confusing—do you make any distinction in your mind between the moment when the American passed over the deeds or title papers on the one hand and took back a lot of securities on the other, the particular moment of transfer, and we will say a period of six weeks or two months after that?

A. I am having a little bit of difficulty in understanding the question. I was wondering——

Q. (interposing) You make a categorical statement there that there was no change in the ownership of the properties, and you predicate that on the previous statement that the securities issued by the Pacific represented the entire amount of securities then outstanding, the assumption being that the securities went over to American. [942]

A. That is right.

Q. Now, what I am asking is whether, when you say there was no change in the ownership, you are referring to the moment when American had passed over the properties to Pacific and had taken back securities and they were still in the box or cash drawer of American? Do you make any distinction between that situation and what occurred within a reasonable time thereafter when some of those securities became owned by bondholders and others became owned by preferred stockholders, the American merely retaining then the common stock?

A. I am definitely drawing that distinction, Mr. Laing. Or I will say that as it affects this transaction, the interpretation that might be read into this particular sentence of mine was to indicate that

(Testimony of John J. O'Neil.)

five minutes before the transaction occurred the properties were owned by American, that the consummation of this particular transaction did not change the fact that American owned it thereafter, and as far as the subsequent disposition of bonds or preferred stock was concerned, to that extent you might say that that did not exactly change the nature of the ownership of the properties. It became a liability of the Pacific Power & Light Company at the time the securities were originally issued, but were merely transferred by American to the public. [943]

Q. But the status of American's ownership was not the same six months afterwards as it was six minutes after, was it?

A. Mr. Laing, you are referring to the subsequent sale of the bonds and preferred stock?

Q. That would certainly be one of the elements I would have in mind.

A. Well, to the extent that the proprietorship interest—maybe we have a little difficulty there. But as far as the bonds are concerned, I look upon them more as a liability than as a turning over of money; whereas as far as the common stock is concerned, why, I would like to always consider it as being a proprietorship interest.

Q. Well, the common stock, of course, represents the ultimate equity in the property, does it not?

A. That is correct.

Q. And the extent of that equity, so far as the American Power & Light Company is concerned, was very materially affected, was it not, by the

(Testimony of John J. O'Neil.)

transaction that created the Pacific Power & Light Company and turned over to it various assets in exchange for which the American Company got back certain securities and passed them along to the public? In other words, prior to the transaction American, we might say, had the entire ownership and the entire property, Mr. O'Neil, did it not? [944]

A. That is correct.

Q. And after the transaction American's interest consisted merely in the equity over and above the rights and interests owned by the bondholders and next the rights and interests applicable to the holders of the preferred stock? Is that correct?

A. That would be correct.

Q. So that there was not the same kind of ownership or the same completeness of ownership or the same identity of ownership on the part of American prior to the transfer as compared with the conditions, we will say, three months afterwards, was there? A. No.

Q. And then, of course, there was a change in the legal status of the ownership too, was there not, that is, when the properties passed out of the possession and control of American, through the subsidiaries in which it then held an interest, and which transferred their properties to the Pacific, that definitely created a change in the legal status of whatever interest American had, did it not?

A. There was a new corporate entity formed, but just how that change from a legal standpoint

(Testimony of John J. O'Neil.)

might affect the accounting viewpoint, Mr. Laing, I don't think I am qualified to tell you.

Q. I don't want to go into detail about it beyond [945] merely calling your attention to the fact that there was a very definite change in the legal status of the ownership of those properties. That is obvious, isn't it, by the transfer?

A. Again, if you take a layman's viewpoint, I would say there was a legal entity created.

Trial Examiner: The hearing will take a recess of five minutes.

(Whereupon, a short recess was taken after which proceedings were resumed as follows:)

Trial Examiner: The hearing will be in order.

By Mr. Laing:

Q. In addition to these bonds and preferred stock of the Pacific that came over to American in July of 1910 or August 1, 1910, whatever date it was, and which then went out to the general public, there were other securities which held rights and interests against the Pacific properties at the time of the transfer, were there not,—after the property was transferred?

A. You mean there were the \$967,000 of underlying bonds?

Q. Yes. A. That is correct.

Q. Those people had rights and interests which they could assert against the administration of those properties [946] in the hands of the Pacific Company, do they not?

(Testimony of John J. O'Neil.)

A. I believe that is correct.

Q. So that I think we have agreed that the status of the properties, both as to ownership and as to the rights of third parties in the properties, were substantially altered by the transfer from the American to the Pacific, have we not?

A. You mean, Mr. Laing, by the subsequent sale of bonds and preferred stock?

Q. Yes.

A. To the extent that the properties were mortgaged, I would say to that extent that there was a change in the rights.

Q. And the Pacific Company, for its own account, entered into covenants with those bondholders which could be enforced as against the Pacific Company as a separate corporate entity, isn't that a fact?

A. That is correct.

Q. And these preferred stockholders, while for a long period of time at least in the minority, did have voting rights share for share with the shares of the common stock that were issued, did they not?

A. That is right.

Q. And even as minority stockholders they would have certain rights which they could enforce against the [947] Pacific Power & Light Company as far as it pertained to the administration of the Company's business and the Company's earnings, isn't that true?

A. They would have a minority voice in the affairs of the Company.

Q. So that when you use the statement that

(Testimony of John J. O'Neil.)

through the medium of complete common stock ownership American Power & Light Company owned and controlled Pacific Power & Light Company after the transfer, you use the word "controlled" in the sense that they had voting control by the election of directors, do you not?

A. I used the word "controlled" in that particular instance, Mr. Laing, more in conformity with the definition as used in the definition of Uniform System of Accounts, but to answer your specific question, that is implied, the voting control.

Q. That is the control which was represented by having a majority of the votes at the stockholders meeting?

A. That is one of the elements of control.

Q. Well, what other elements are there?

A. Well, the majority of voting stock does not necessarily constitute the only element that makes for control. I mean, one corporation might control another through the medium of minority stock ownership.

Q. Yes, assuming that minority ownership were large [948] enough to attract to itself other stockholders who would vote with them at a stockholders meeting,—is that what you mean?

A. Either that or a consolidated minority block as opposed to a scattered majority.

Q. But in essence it boils down to the fact that the fellow who has control is the fellow who shows up with enough votes at the stockholders meeting to elect directors. Is that not a fact?

(Testimony of John J. O'Neil.)

A. That has very, very often happened, Mr. Laing.

Q. Well, is there any other way that the control can be exercised?

A. Yes, I can read several for you.

Q. Go ahead.

A. It probably would be will under the circumstances to give the exact definition given by the Uniform System of Accounts and by which I am constantly motivated in referring to the word "control". As indicated on page 4 under Definitions of Uniform System of Accounts, under 5-B—have you the page?

Q. Where does it appear?

A. 5-B (Reading) " 'Control' (including the terms 'controlling', 'controlled by', and 'under common control with') means the possession, directly or indirectly, of the power to direct or cause the direction of the management [949] and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract, or any other direct or indirect means."

Q. Now, that is your general definition of "control", which you say represents your bible when you use the word in this sort of a discussion?

(Testimony of John J. O'Neil.)

A. Definitely.

Q. As applied to the Pacific Power & Light Company, the control or such control as the American may be said to have had, after the creation of this separate corporation and after these bonds and preferred stock went out to the public, was exercised by American's predominant voting right position at stockholders meetings, was it not?

A. I think in the case of American the voting stock control was the major element of the definition of control.

Q. And they would exercise that control by being able to elect directors who were satisfactory to it at stockholders meetings? Is that in effect what that amounts to?

A. I will point this out, that the exercise of that control is not necessary to my definition. The power to [950] exercise that control is sufficient, and I believe in the case of American they did exercise that power.

Q. Well, they voted at the stockholders meetings, we assume.

A. That is right.

Q. And by the "power to exercise that control" you mean they had power to veto election of any director that they did not approve of?

A. That is correct.

Q. And that would be true in any case where one person or one corporation owned a sufficient block of stock of another corporation so that he has a predominant position at a stockholders meeting, is that true?

(Testimony of John J. O'Neil.)

A. That is correct. Where you get beyond the pale of a predominance of voting of stock ownership, the matter of control of the Company becomes entirely factual.

Q. So that when you are speaking of the word "control" you used it in that sense, but when it comes to the matter of ownership, you are necessarily limiting your statement, are you not, to the fact that the American, after the transfer and after the securities had gone out and had been distributed, owned merely what was in effect a third or a fourth table position in the actual property ownership of the Company, are you not? That is, we had here certain underlying bonds that had a prior lien on certain parts of [951] of the property; we had the Pacific Power & Light Company's own bonds which, subject to the underlying bonds, had certain rights in the property; and we had after that the preferred stock which, as to liquidation and as to earnings, came ahead of the common stock, did we not?

A. That is correct.

Q. And the ownership of American at that point is limited to what is left after other prior claims are taken care of, is that true?

A. That is correct.

Q. And, of course, the record shows in this case, does it not, that immediately after this July, 1910 transaction was consummated the actual administration of the Pacific Power & Light Company was

(Testimony of John J. O'Neil.)

under the direction of the Board of Directors, the majority of whom lived in the Pacific Northwest and whose meetings were held in the Pacific Northwest, isn't that true?

A. That is true. I was wondering if there might be any implication in that question that that placed it beyond the control range.

Q. No, all that I wanted to call attention to was the fact that certainly after this meeting which we have talked about where this transaction was authorized, it could no longer be said that the men who acted as directors, and had the direct legal responsibility for the management of this Company, [952] were employees or associates of American Power & Light Company, as has been suggested was true at the first meeting when this 1910 transaction was considered?

A. I believe that is so. I believe that there was a certain independence of action granted or exercised by the second management in so far as it might affect the dealings with a third party.

Q. I think that in the course perhaps of Mr. Neill's testimony attention was called to the composition of the Board of Directors of the Pacific Light & Power Company, and this particular date of December 22, 1911 happened to be picked out. On that date all but three of the fifteen Directors were men who resided in Portland, Oregon or Tacoma, Washington or Spokane, Washington or other places around in the States of Oregon and Washington, isn't that true?

(Testimony of John J. O'Neil.)

A. That is true, I believe.

Q. And that situation has prevailed ever since, has it not? That is, at least, there has always been, —there never have been more than three New York Directors on this Board of 15 Directors, have there?

A. I don't believe there have.

Q. And so far as the record shows, there probably has not been any meeting of the Board of Directors of the Pacific Light & Power Company at which those who were the three Directors of the Company from New York were present, [953] has there? A. That is a very large order.

Q. I mean you would not be surprised if I should make the statement to you that the New York Directors did not attend the meetings of the Board of Directors of the Pacific Power & Light Company except in very rare and remote instances?

A. I don't believe that would be surprising.

Q. And with respect to this Board of Directors which we identified as of that particular date as being composed of men like J. C. Ainsworth, who was for many years president of the United States National Bank of Portland; Mr. C. Hunt Lewis, who was a financial and businessman here in Portland, Oregon; Mr. H. C. Lucas, who was a banker in Yakima; Mr. Edward Cookingham, who for many years was chief officer of the Ladd and Tilton Bank, and later with the United States National Bank; Mr. Philip Beuhner, who was a tim-

(Testimony of John J. O'Neil.)

berman and a man with large financial interests, living in Portland; Miles C. Moore, who was Governor of the State of Washington at one time, or perhaps he was the last territorial Governor of the Territory of Washington, and a businessman in Walla Walla; S. S. Gordon, who was a banker and businessman at Astoria, Oregon; Mr. William Jones, who was head of the Jones-Scott Milling Company of Walla Walla and Tacoma; Josiah Richards, who was a businessman living in Spokane, whose business interests required him to travel considerably [954] in the State of Washington; and Mr. Fred S. Fogg, who was a banker and a lawyer in Tacoma,—men of that type could reasonably be looked upon as men of independent judgment and responsibility, could they not, based on my description of their activities and places in the scheme of things?

A. Well, unfortunately, I don't know any of the gentlemen that you mentioned, but I will grant this, Mr. Laing, just by general description, as the question was asked, the question would seem to draw that sort of information as to whether or not that type of man, or those types of men, would generally be considered to have independent thought, and I will definitely grant that.

Q. Well, immediately after this transaction we have a situation where not only has the legal title to these properties passed to a new corporate entity, but we have a Board of Directors directing

(Testimony of John J. O'Neil.)

the affairs of the new corporation, who are these men of substance and responsibility and who have no other relationship or connection with the American Power & Light Company, except as being Directors of this Company; we have underlying bondholders; we have Pacific Company's bondholders and Pacific Company's preferred stockholders, all having something to say about the administration of the affairs of the Pacific Power & Light Company; so it would scarcely be correct, under the circumstances, to say, after that transaction the American was the sole owner [955] of the Pacific Power & Light Company, would it?

A. Well, in so far as the common stock equity measures the degree of proprietorship, and all the other evidences of indebtedness are either secured indebtedness or mortgages, to that extent the American was sole owner, other than the fact that the properties and assets of the corporation might have been mortgaged.

Q. Well, at least the rights and interests of third parties, to a very, very pronounced degree had come in through the issuance of Pacific bonds?

A. That is very true, Mr. Laing.

Q. And the interest of third parties had come in through the issuance of preferred stock and the acquisition of the preferred stock by the public generally?

A. That is correct.

Q. Now, with reference to a statement you make in the transcript at page 884—I thought you let

(Testimony of John J. O'Neil.)

the Pacific Power & Light Company down quite a little here when you say: "Pacific Power & Light Company is but an account in the general ledger of the American Power & Light Company, the costs of which have been analyzed and established on the books of that Company. Securities have been substituted for the costs, but there has been no change in the costs. As a result," I assume because we are just a ledger entry, "certain of the subsequent adjustments result from an analysis of system costs of the [956] properties acquired."

Now, I would like to ask you if American should go out tomorrow and acquire, say, 5 percent or 10 percent of the securities of some other enterprise, that company, so far as it relates to the American Power & Light Company, would probably be only a ledger account on the books of the American Power & Light Company; would that not be true?

A. Yes.

Q. Or if the American today, not owning any of the Pacific Power & Light Company securities—not today, but two years ago or three years ago—should have gone out and bought a block of Pacific preferred stock at the then depressed market price, at thirty or forty points, whatever the price was, purchasing at this price \$100,000 par value of Pacific preferred stock; assuming those facts and having invested \$30,000 or \$40,000 for this \$100,000 par value of preferred stock; in that case, the Pacific Power & Light Company would be a

(Testimony of John J. O'Neil.)

ledger account on the books of American for whatever was paid for that preferred stock?

A. Yes. To carry the illustration a little further; the Inland Power & Light Company is but a ledger account on the books of the Pacific Power & Light Company.

Q. You don't intend to imply that we do not have separate personalities or separate corporate existences? We are nothing more than merely somebody else's bookkeeping [957] entry?

A. I am afraid you are taking me in the legal field.

Q. I am perhaps taking your statement a little bit too literally; I want to know just what you meant when you stated we are a ledger account on the books of the American Power & Light Company.

A. You will have to remember the question that I was asked as to why I went to American to get the Pacific Power & Light costs. That is why I said they were an entry on the books of the American Power & Light Company.

Q. Let us assume this kind of a situation, where the Pacific was organized entirely independently of American, and it sold all of its bonds and all of its preferred stock and all of its common stock directly for cash at the face value of the securities; in other words, its preferred stock brought into the the treasury \$100 a share in actual cash, and the Company went along for a number of years and

(Testimony of John J. O'Neil.)

ran into a depression which affected its earnings, or there was a threat of destructive competition which frightened investors, or something happened so that the preferred stock, marketwise, was worth only \$25 a share; and then suppose that the American Power & Light Company stepped into the picture for the first time as an investor in Pacific, and spent \$25,000 in buying that stock and, by so doing, would have acquired stock of a par value of \$100,000 for a \$25,000 investment [958] under that assumption, the Pacific would be an item on the ledger account of the American to the extent of \$25,000; would it not?

A. That is correct.

Q. But the cost of the property that the Pacific Power & Light got from that stock when it was issued originally would be the cost as recorded on Pacific's books that it paid for the property that it got?

A. That would be very true, Mr. Laing.

Q. So that the very fact that the Pacific is just an account on the general ledger of the American is not the thing that determines or has any bearing on your use of American costs in getting at the adjustments you reflected in this reclassification statement?

A. Let me look at it this way: The original costs or the costs of acquiring the properties were first accumulated on the books of the American Power & Light Company. Now, upon the substitution of those costs, or, rather, by the substitu-

(Testimony of John J. O'Neil.)

tion of securities of the Pacific Power & Light

Q. Of course it does not change the American the costs of the various properties lose their identity in the securities of the Pacific Power & Light Company. Now, dealing with the properties on the books of the Pacific: in order to determine the costs of those properties, you can't go to the securities of the Pacific; you must go to the account [959] on the books of the American, where those costs have been accumulated and where the substitution of costs for securities has been made.

Q. Where you say you can't take the securities as representing the cost, that is because, in your judgment, the transaction was dominated by the American Power & Light Company and they were in a sense, as you see it, acting on both sides of the bargain; is that right?

A. I probably view the situation this way: that a group of operating properties in the Pacific Northwest are acquired; they don't want to be called "American" or operated by American; or American doesn't want to operate them so American forms an agent, a child, to operate its properties in the Pacific Northwest and does it through the medium, as you characterize it, the medium of a legal entity in the Northwest to enter into any contracts or whatever may be necessary; but that does not change the costs.

Q. Of course it does not change the American costs; we recognize that. But the point of your dis-

(Testimony of John J. O'Neil.)

cussion here,—and I don't wish to drag it out unduly—as I see it is this: the reason that you feel that the American costs are controlling in determining the costs to Pacific in the 1910 transaction is because at that time, to all practical intent and purposes, as you see it, the American Power & [960] Light Company dominated and really was the Pacific, under another name for the moment?

A. That conclusion is predicated upon the fact that the properties costing the American Power & Light Company six million dollars did not become costs of \$10,900,000 by the formation of a new legal entity.

Q. Merely by the transfer of the property to a company controlled by the American Company?

A. That is correct.

Q. But the mere fact that a company such as the Pacific, or any other corporation, was an account on the ledger of the American Power & Light Company would not have any particular significance, would it, Mr. O'Neil?

A. Other than the fact that that is where I go for my costs.

Q. In the case I cited, where the American may have bought \$100,000 value of preferred stock for \$25,000, making its first investment at that time in the Pacific, would that have any bearing on the cost to the Pacific of the property which represented that stock?

A. No.

(Testimony of John J. O'Neil.)

Q. So the whole thing boils down in your mind to the fact that the American in 1910 was momentarily the owner of all the securities which the Pacific issued and exchanged for the properties which American turned over to Pacific at [961] that time; isn't that true?

A. That is essentially correct, yes.

Q. Now, at a later place in your testimony, where you talk about the 1930 transaction,——

A. Interposing) Is that in connection with the \$623,000?

Q. I will find it. You used the expression: "Without attempting to repeat again the opinions expressed in this testimony, it will suffice to say that the transaction in 1930 was similar to the 1910 transfer, entirely between the same owners."

Now, in the line of our discussion, would you say that Pacific Power & Light Company and the American Power & Light Company were one and the same corporate entity in 1930?

A. No; they were not one and the same entity, Mr. Laing, but they were under common control.

Q. What are you referring to by "common control"?

A. Are you referring to the Inland and Pacific, or the American and Pacific?

Q. The American and Pacific.

A. In 1930 the relationship of American to Pacific was one covered by the definition of "control".

Q. We are not discussing the question of "control" as exercised at a stockholders meeting; the

(Testimony of John J. O'Neil.)

expression in your testimony was that the transaction was entirely between [962] the same owners. I just wanted to know what you meant by that.

A. Well, a more general interpretation of that would be that the various prices placed upon the properties in the transfer were all a matter of common control. I am not saying there was no independence of thought, or that there were not two separate parties arriving at the prices at which those were to be transferred.

Q. On what do you base your statement?

A. Well, I believe, the American owned all the common stock of Pacific.

Q. That is true.

A. That is right, and all the common stock of Inland.

Q. Yes. But we are talking about the transaction that took place between the Pacific and American, where the Pacific acquired certain properties from the American and gave the American certain securities in place of them. Do you mean to suggest that that was not a transaction between separate parties, negotiated between separate parties?

A. You are not putting in the question the legal corporate entities?

Q. I am trying to get at what you mean when you say that transaction of 1930 was between the same owners. I assume you mean by that that they were identical. [963]

A. That there was control.

(Testimony of John J. O'Neil.)

Q. Do you mean that the American had a voting control over the election of the Directors of the Pacific; is that what you mean?

A. No, that is not all I mean, that they had control over the election of the Directors; I mean that at that time they controlled the policies and management of the Pacific Power & Light Company, which management was arriving at the price to be paid to American.

Q. Let us come back to that, because that is something I never knew before. You say that in 1930 the American controlled the management of the Pacific Power & Light Company?

A. Yes, sir.

Q. On what basis and in what manner?

A. Through the election of its Directors is one.

Q. Well, the American had, as you say, a majority control in the election of Directors?

A. Yes.

Q. Are you implying by that that the Directors did not exercise definitely independent judgment, in any discussions between the Company and the American?

A. The judgment of the Directors of the Pacific Power & Light Company might have been independent, but they would only remain so in so far as that judgment was in accord [964] with the wishes of the American Power & Light Company. By that I mean this, Mr. Laing,—

Q. You mean that they could have fired the Board of Directors at the next annual meeting?

(Testimony of John J. O'Neil.)

A. That the Pacific Power & Light Company dealing with the American were not two different people in establishing the cost or price to be paid for something. As you say, there might have been a certain degree of independence exercised by the management out here, and to that extent I will grant this: that if American wanted the Pacific to buy a certain piece of property at a certain price, that the Board of Directors out here might say, "We won't buy it at that price. We will buy it at another price." To that extent it represents an independent judgment; but it is my conclusion that, ultimately, the transaction, no matter how effected, would meet with the approval of the American Power & Light Company.

Q. Of course you would never have a deal unless two parties agree?

A. There is where we have a difference of opinion. Where there are two independent parties not commonly controlled, you have two parties in a deal, if they arrive at one. But when the Pacific Power & Light Company sold to the American, or American sold to the Pacific, that was not a deal between two independent parties. [965]

Q. But the point that you make is that if the Pacific Power & Light Company or the American Power & Light Company ever got together on any transaction, it would be an indication that the American was satisfied; is that correct?

A. Would you mind repeating that?

Q. I said the mere fact that the American and

(Testimony of John J. O'Neil.)

Pacific got together on any transaction suggests to you that the American was satisfied, and therefore it carried out its control. As a practical matter, is that a fair statement to make?

A. Oh, I believe so.

Q. Supposing you and I would talk about a deal, and I said I have got a piece of property that I am willing to sell for a thousand dollars, and we dicker for a while, and you say "I will give you \$800." Well, we consummate the deal. Does that indicate that you control the transaction?

A. Between you and me?

Q. Yes. A. I would say No.

Q. And the only reason you differentiate that kind of transaction from the sort of transaction that might have occurred between the American and the Pacific is your assumption that because the American had the power to ultimately get rid [966] of the Board of Directors, there wouldn't be any independent bargaining between them on any transaction; isn't that it?

A. Well, let me put it this way, Mr. Laing: I will grant that there might be differences of opinion, that the views of American might be different from the views of Pacific, and the Directors here might argue or debate that, for certain local reasons, certain things that the American wanted to do would not be satisfactory to them, and vice versa; to that extent, there might be differences. But the point I want to make is that, as a result of independent action, if you want to characterize it

(Testimony of John J. O'Neil.)

as such, on the part of the local management, if an exchange or transfer of property was not made at cost, just because there might have been, in your opinion, an independent judgment exercised in the transfer of those properties would not influence the fact that it was a profit so far as the other company was concerned. Do I make myself clear?

Q. Yes.

A. You might not give the American the full amount the American asked, and to that extent exercise an independent judgment; but if that figure is still higher than the cost, it still represents profit to the seller.

Q. But the particular reference we had, in the transaction we had in mind, was where it was less than cost.

A. I believe that in that particular transaction [967] there was a little bit of what you said.

Q. Some real bargaining?

A. That is correct. I might add to that, Mr. Laing, in spite of the fact that there was that independence of action which was characteristic of that particular action, I have still transferred that as a debit to Account 107.

Q. I understand that. The point I am making is that, except for the transaction that occurred in July of 1910, we have had a Board of Directors that, in no sense of the term, could be said to be American nominees or associates, in the sense

(Testimony of John J. O'Neil.)

that you refer to them in connection with the transaction of July, 1910. We have had an independent Board of Directors, made up of Western men, who have been responsible for the operation and administration of this property for the last thirty odd years, beginning within two or three weeks after this transaction in July, 1910, have we not?

A. I don't want to profess a familiarity with all of the actions of the Board of Directors since 1910, but I would at least go this far with you and say that, since 1910, there have been no similar transactions of the kind that took place in 1910; and if, to that extent, it would indicate an independence on the part of your local Board of Directors, that is all I know, that such a thing—I don't like to use the word “perpetrated”—that such a deal [968] should not be perpetrated.

Q. I don't intend to argue the matter with you. I merely wanted to bring out what I know to be the fact.

A. I believe your ideas are just the same as Mr. Slaff's; you are just trying to get my ideas on the record.

Q. With respect to the 1910 transaction, your point is that, inasmuch as American owned all the securities at the time all the properties were turned over to the Pacific, and at the meeting at which this transaction was authorized and consummated, you might say the members of the Board at that time were men largely connected with the Ameri-

(Testimony of John J. O'Neil.)

can Company and its associates in New York—for that reason you don't feel that the judgment exercised by those men, as Directors of the Pacific Power & Light Company, should be given any weight in determining the cost to the Pacific Company, but, instead, we must rely exclusively on the costs as recorded on the books of the American Company?

A. Irrespective of independent judgment or the controlling judgment, in transfers between associated companies those transfers should not be made at a profit, or effect any writeup in the plant which is offset by securities. Does that answer your question?

Q. You are expressing your point of view? The last answer expresses your opinion?

A. That is right, that the transfer between [969] associated companies shall be at cost.

By Mr. Foley:

Q. You mean under the System of Accounts as you interpret them?

A. You mean the Federal Power Commission's System of Accounts?

Q. Yes.

A. Mr. Foley, I had that same idea long before the Federal Power Commission System of Accounts was promulgated. I believe it is general practice in the accounting profession, so far as I have known it, that, as between associated companies, there shall not be any profit.

(Testimony of John J. O'Neil.)

By Mr. Laing:

Q. I have only one other question, and that one has to do with the treatment you and your associates have received from the Pacific Power & Light Company organization in the prosecution of your studies or in checking work or investigation relating to this Pacific Power & Light reclassification.

As I recall, you stated you had been on this job from about the first of July, 1940 until some time around the first of October, 1940 working here in Portland, and that afterwards your relation to the job was in a supervisory capacity, and that Mr. Flynn was then directly in charge of the work here in Portland; and I assume, like Mr. Flynn, [970] you came here some days in advance of the hearing, September 29, to check up on the work that had been done by the Company in presenting its revised statement; so that you have had, over that period of time, from the first of July, 1940 to the present time, a considerable amount of direct and indirect contact with Mr. Neill, Mr. Phipps and Mr. Hawkins, and others of the Pacific Power & Light Company who had responsibilities in connection with the reclassification work; and what I want to know from you is what sort of treatment you found you got from these men in so far as it pertained to the carrying on of the work that you were trying to do.

A. Unfortunately I had little or nothing to do with Mr. Hawkins, but I would include him, in

(Testimony of John J. O'Neil.)

view of my experiences of the last few days. Most of my contacts were with Mr. Neill, Mr. Willard and Mr. Phipps; and the conclusion that I would draw from my association with those men is that, so far as my particular examination was concerned, I found that they were not only cooperative but, by comparison with certain other general experiences a long time ago, I found them extremely helpful and cooperative in attempting to assist, even beyond what we might ordinarily have required.

Q. So then, speaking generally, do you consider that the Company has attempted in good faith and with reasonable diligence to comply with the requirements that were made upon it by the System of Accounts and the orders [971] we have to respond to in this proceeding?

A. I would say Yes.

Mr. Laing: That is all, Mr. O'Neil.

Trial Examiner: Do you have any questions, Mr. Foley?

Mr. Foley: No questions.

Trial Examiner: Any questions, Mr. Slaff?

Mr. Slaff: There might be a few questions of the witness, but I would prefer to look at the transcript and I can then determine whether there is any necessity for further examination.

Trial Examiner: You may step down, Mr. O'Neil. [972]

MELWOOD W. VAN SCOYOC

called as a witness on behalf of the Commission, having been previously sworn, resumed the stand and testified further as follows: [975]

Direct Examination

(Resumed)

By Mr. Slaff:

Q. Mr. Van Scoyoc, you have previously testified in this proceeding, have you?

A. Yes. At the hearing held in Washington, D. C. on May 24, 1940.

Q. At the time of that hearing, the field examination of the original cost study of Pacific Power & Light Company had been suspended?

A. Yes, sir.

Q. Was the field investigation subsequently reopened?

A. Yes. On July 8, 1940, after Pacific Power & Light Company submitted its original cost study to the Commission the investigation was resumed.

Q. When was that field examination concluded?

A. On February 15, 1941.

Q. Did the staff assigned to the field investigation prepare a report covering the investigation?

A. Yes. A report was prepared in collaboration with the staff of the Public Utilities Commissioner of Oregon; it is Exhibit No. 16 in this proceeding.

Q. And did you concur in the conclusions and recommendations set forth in the report?

A. I did.

(Testimony of Melwood W. Van Scoyoc.)

Q. And you examined the original cost study prepared [976] by the Pacific Power & Light Company, the first one, being Exhibit 15 herein?

A. I have.

Q. And have you also examined the revised statement submitted by Pacific Power & Light Company, the Exhibit No. 15? A. Yes, I have.

Q. You have been present, of course, and heard the testimony of Mr.——

Mr. Laing (interposing): Mr. Slaff.

Mr. Slaff: Surely, Mr. Laing.

Mr. Laing: Did you give that last one the right number?

Mr. Slaff: 17; that is what I thought I said.

The Reporter: Mr. Slaff, you said "Exhibit 15".

Mr. Slaff: That last one should be Exhibit No. 17. Thank you, Mr. Reporter.

By Mr. Slaff:

Q. And you have been present here and heard the testimony of Mr. Will T. Neill in this hearing? A. Yes, I heard Mr. Neill testify.

Q. Is it your understanding from Mr. Neill's testimony on the Revised Statement, Exhibit No. 17, that the Company is in agreement with the Commission's staff with respect to the adjustments set out in Exhibit No. 16, [977] relating to Account 100.1, Electric Plant in Service, and Account 100.2, Electric Plant Leased to Others?

A. Yes, sir.

Q. Have you heard the testimony of Messrs.

(Testimony of Melwood W. Van Scoyoc.)

J. H. Flynn and John J. O'Neil of the Commission's staff in this proceeding? A. I have.

Q. And are there any comments you would like to make with respect to their testimony?

A. Nothing, except to say that I am in agreement with the views and conclusions expressed by them.

Q. Mr. Van Scoyoc, as a result of certain further adjustments to the Company's revised reclassification statements, Exhibit No. 17, which were testified to by Mr. O'Neil and reflected in his Exhibits Nos. 43 and 47, there is classified in Account 107, Electric Plant Adjustments, the sum of \$6,420,800.61. Have you given consideration to the appropriate disposition of such amount?

A. Yes, I have. [978]

Q. After making the dispositions which you have been discussing, what remaining balance is there in Account 107, Electric Plant Adjustments?

A. \$4,122,173.16.

Q. What does this amount represent?

A. It represents the excess of recorded costs on Pacific Company's books over the cost to American Power & Light Company of certain properties transferred to the Pacific Company in 1910 and 1930, amounting to \$4,121,981.41, and a small amount of \$191.75 applicable to the Walla Walla Valley Railway Company.

Q. Why is this amount of \$4,121,981.41 classified in Account 107, Electric Plant Adjustments?

[981]

(Testimony of Melwood W. Van Scoyoc.)

A. This item is classified in Account 107 as it is the opinion of the staff that it is a writeup of plant, and under the System of Accounts must be included in Account 107.

Q. Have you any recommendations to make with respect to the disposition of the amount of \$4,122,-173.16 which has been classified in Account 107?

Mr. Foley: Mr. Examiner, I would like to object to this question upon the ground that any testimony elicited would be irrelevant and immaterial and premature, because it calls for evidence of the witness as to the disposition of amounts proposed to be placed in Account 107 by the staff before the Commission has determined what definite items and amounts should be placed in such account, which is to require the meeting of the issue of disposition of amounts classified in Account 107 before the Commission has determined what items and amounts should be so classified. We submit it violates the constitutional guarantees of procedure by due process.

Trial Examiner: The order setting this matter for hearing made provision that the evidence should be taken as to the proposed disposition of any items that might be in controversy between the staff and the intervener. The objection is therefore overruled.

Mr. Laing: I would like to have the record show I join in Mr. Foley's objection, and I would like to object [982] on the further ground that the matter of disposition of items which may ulti-

(Testimony of Melwood W. Van Scoyoc.)

mately get into account 107 is not an accounting matter. It is not a matter on which an accountant as such is qualified to express an opinion, and it is a matter, as Mr. Smith himself has said on many occasions, which calls for the judgment of the Commission upon all the facts as elicited; and it is, therefore, not one that is a proper subject of testimony by this witness.

Trial Examiner: Overruled.

Mr. Slaff: Will you proceed?

Mr. Foley: I suppose we have the same objection to this entire line of testimony.

Mr. Slaff: You make a general objection, I take it, running to each question?

Mr. Foley: Yes, I wish the objection to the entire line of question be noted.

Trial Examiner: Yes, it may be so understood, Mr. Foley.

A. (Continuing) Yes. I believe that it should be disposed of from Account 107 at once.

By Mr. Slaff:

Q. Why do you recommend disposition?

A. The amount represents inflation of the accounts. It is not a valid cost and has no proper place in the accounts of a public utility. [983]

Q. What plan do you recommend be followed with respect to disposing of this item?

A. As far as accounting principles are concerned, the amount should be eliminated at once. It could be charged either directly to Earned Surplus or to a created Capital Surplus. If this

(Testimony of Melwood W. Van Scoyoc.)

amount is charged to Earned Surplus at once, it would cause a large deficit therein. As a matter of policy, and not as a matter of accounting principle, some amortization program might be sanctioned, such as was ordered by the Federal Power Commission in the case of Northwestern Electric Company in the Opinion dated December 6, 1940, Opinion No. 56, Docket IT-5642. When I refer in this instance to matter of policy, I refer particularly to consideration which might be given the position of the preferred stockholders.

Q. Have you given any consideration to a plan for the creation of capital surplus which could be used to extinguish this write-up?

A. I have.

Q. Will you explain what you have in mind?

A. I should like to suggest this plan for consideration by the Commission, as well as by Pacific Power & Light Company and American Power & Light Company which I feel offers an excellent solution of the problem.

As of December 31, 1940, American Power & Light Company [984] held 1,000,000 shares of the no par value common stock of Pacific Power & Light Company, having a stated value per share of \$7.00 or a total for the 1,000,000 shares of \$7,000,000. It also owned a 6 percent note of Pacific Company in the principal amount of \$2,794,500.

It would be my suggestion that American Company forgive or make a capital contribution of

(Testimony of Melwood W. Van Scoyoc.)

such indebtedness which would create a capital surplus in the above stated amount. I would also suggest that American Company surrender 189,667 shares of Pacific Company's common stock now held by it, which at \$7.00 per share will result in a further capital contribution of \$1,327,669. The sum of \$2,794,500 and \$1,327,669 is \$4,122,169, and such amount could be used to extinguish the write-up classified in Account 107. The balance of Account 107 amounting to 4.16, could be charged to Earned Surplus.

Q. If such a plan were followed, what would be the resulting capital structure of Pacific Power & Light Company at December 31, 1940?

A. The Company would then have outstanding: Common stock, 810,333 shares, \$5,672,331; preferred stock, 68,685 shares, 6,868,500; 1st mortgage bonds, \$20,500,000, a total of \$33,040,831.

Q. What would be the effect on the income of Pacific Company of your suggested plan? [985]

A. On the basis of 1940 operations, the income account would be relieved of a charge for interest on the \$2,794,500 of notes to American in the amount of \$167,670.

Q. And would this amount then be available for common stock dividends to American Power & Light Company?

A. It would be available for such dividends or other charges.

Q. In your judgment, Mr. Van Scoyoc, would the consummation of such a plan as you have sug-

(Testimony of Melwood W. Van Scoyoc.)

gested effect an improvement in the financial situation with respect to Pacific Power & Light Company?

A. Very much so. It removes a write-up from the asset side of the balance sheet. It also has the effect of materially improving the company's current position; bettering its times interest earned ratio, its times dividends earned ratio applicable to the preferred stock, and also the amount earned per share for the common stock.

Q. Would the stated value of the company's common stock then measure the actual cash investment of American Power & Light Company in such common stock? A. Yes, it would.

Q. Does this complete your discussion with respect to the disposition of the write-up?

A. Yes, it does. [986]

Q. What amount is classified in Account 100.5, Electric Plant Acquisition Adjustments?

A. Exhibit 46 reflects an amount of \$2,741,591.66 classified in that account.

Q. And what does that amount represent?

A. It represents the difference between the original cost of acquired property at December 31, 1936 and the acquisition cost thereof.

Q. Does it represent amounts paid for operating units or systems over and above the original cost of such operating units or systems acquired?

A. Yes, it does.

Q. Have you made any studies which indicate

(Testimony of Melwood W. Van Scoyoc.)

what these payments in excess of original cost were for? A. Yes, sir.

Q. And what conclusions did you arrive at as a result of such studies?

A. It was my conclusion that substantially all of [990] the excess above original cost represents payments for intangibles.

Q. Upon what did you base your conclusion?

A. With the exception of the properties acquired from Inland Power & Light Company in 1930, appraisals are available at or about the dates of acquisition of practically all properties which, upon examination, indicated that the replacement cost of the physical units of property plus the market value of land and less the accrued depreciation, was not greater than the original cost of the property; hence it must be concluded that the amounts paid in excess of original cost were for intangibles. With respect to the Inland properties, appraisals made in anticipation of sale by Puget Sound Power & Light Company, to Inland of the leased properties showed total appraisal values of physical property of less than the estimated original cost of the properties. Some portion of the acquisition adjustments arising from the purchase by American and Inland of the properties of the Bend Water, Light & Power Company, Deschutes Power Company, Sherman Electric Company and Enterprise Electric Company, which were transferred by Inland to Pacific in 1930, may have been applicable to physical property. However, there were no appraisals made in anticipation of

(Testimony of Melwood W. Van Scoyoc.)

such purchases, or immediately thereafter, and it appears from the [991] Company's correspondence files that actual and anticipated earnings were the major consideration in purchasing these properties.

In making use of the various reproduction cost appraisals for the purpose of arriving at a conclusion with respect to the presence of physical property values in excess of original cost, I do not mean to imply that the value of physical property is always equal to the reproduction cost new thereof less accrued depreciation. Cases will, of course, exist where such values may well be less than the values determined on a reproduction cost basis. I merely wish to point out that it represents a ceiling for physical property values.

Q. Have you attempted to allocate any of the acquisition adjustment to physical property values?

A. It would be impossible at this date to make anything but a very rough approximation of the amount of acquisition adjustment applicable to these properties which may be assignable to physical property values. I have not attempted to do so, for I do not believe that such a study would serve any useful purpose.

Q. Is it your judgment, then, Mr. Van Scoyoc, that the entire balance in Account 100.5 of \$2,741,-591.66 should be considered as payment for intangibles?

A. Yes; I believe for all practical purposes that [992] the balance in Account 100.5 should be so considered. In that connection I desire to point

(Testimony of Melwood W. Van Scoyoc.)

out that it was the practice of the Company to make retirements from time to time of certain properties on the basis of the Hagenah reproduction cost new appraisal. The credit item in Account 100.5 labeled "Rretirement Adjustments" and shown on Exhibit No. 46 is the result of this practice. These retirements which were made in excess of original cost have the effect of decreasing that portion of the acquisition adjustment which may be applicable to physical property.

Q. Have you attempted to identify or classify the several kinds of intangibles which may be present in the acquisition adjustment account?

A. No. On the basis of available information such a determination would involve a great deal of speculation. As Mr. Neill stated in his testimony on last Monday, intangible values tend to merge. Furthermore, practically all intangible values can be associated with earning power in one way or another.

Q. Do you believe that intangibles bought and paid for have a permanent place in the plant accounts of a public utility?

A. No, sir; I do not. Intangibles have a very questionable value, as well as life. There is no more reason to retain permanently the cost of an intangible in the books [993] of account than there is to retain the cost of tangible property in the accounts after it has been physically retired. The difficulty lies in the fact that the life of an intangible

(Testimony of Melwood W. Van Scoyoc.)

is uncertain and its decline in value is not as easily ascertainable as that of tangible property. The sane and prudent thing for management to do is to provide for its ultimate loss in value. It is good accounting and it is practiced to a large extent by non-utility business enterprises. I might add that it is beginning to be practiced by a good many public utilities with which we have come in contact in our reclassification work.

Q. Do you have any specific recommendation with respect to the disposition of the amount in the acquisition adjustment account of \$2,741,591.66?

Mr. Foley: I would like to object to the question and other similar questions to follow on the same grounds I objected before.

Mr. Laing: And I would like to renew my previous objection.

Trial Examiner: Objection overruled.

A. (Continuing) Yes. My recommendation would be that this amount be disposed of from Account 100.5 by equal annual charges to Account 537, over a period of 10 or 15 years commencing with the year 1941. [994]

By Mr. Slaff:

Q. What, for purposes of illustration, would be the annual amount to be amortized on a 15-year basis? A. \$182,772.77.

Q. Why do you recommend a 10 or 15-year amortization period?

A. While I believe a shorter period would be more desirable in view of the fact that approxi-

(Testimony of Melwood W. Van Scoyoc.)

mately one-half of the acquisition adjustment has been carried on the books of the Company for 30 years, in matters of this kind a practical solution is sought and, in my judgment, an amortization program of 10 or 15 years will satisfactorily accomplish the disposition of the acquisition adjustment.

Q. What effect would a 15-year amortization program have on the net income of the Company?

A. On the basis of 1940 operations, and taking into consideration my previous recommendations with respect to the disposition of amounts in Account 107, Electric Plant Adjustments, the net income of the Company for 1940 available for preferred and common stock dividends would have been \$775,421.43, as compared with \$853,579.31.

Q. After payment of preferred dividends, how much would be available for common dividends?

A. \$316,943.43.

Q. Does this plan of disposition for the amount in [995] Account 100.5 affect the Company's cash position, or in other words, does it involve the expenditure of any funds?

A. No, sir, it simply means that the acquisition adjustment is replaced over a 15-year period through charges to income with other assets—either cash and other current assets, or physical property.

Mr. Slaff: You may cross examine. [996]

Cross Examination

By Mr. Laing:

Q. With respect to several of these items which

(Testimony of Melwood W. Van Scoyoc.)

were discussed in your testimony as amounts which in your judgment should be transferred to certain other accounts, notably, the \$42,000-odd that the Company and the examiners seem to have agreed upon should go to Account 107 and thence to surplus, as a charge against it, and the amount of amortized debt discount and expense of which \$454,349.90 represents an amount which relates to bonds that became due on August 1, 1930, and which therefore are theoretically washed out, and the remainder, \$1,576,377.74 representing discount and expense incurred in connection with the bonds that were issued August 1, 1930 running for a period of 25 years—you stated rather emphatically that the parts of these amounts in the Debt Discount and Expense, which represent the matured part of it at the present time, should be immediately charged to surplus; and you go on to say it is presumed of course that the Company will include in its income account for 1941 and subsequent years the proportionate share of the un-amortized debt discount and expense applicable for such years.

Now, do I understand from your language with respect to those items that the Company may properly go ahead and make these transfers at the present time, or is the Company [997] supposed to wait for some action or ruling with respect thereto?

A. I may say this, Mr. Laing, that with respect to the disposition made of Account 107 items, this, I believe under the language of the System of Ac-

(Testimony of Melwood W. Van Scoyoc.)

counts, should be made under the Commission's direction or approval.

Q. With respect to this discount and expense, as I recall the examiner's report, they have handled that through Account 107 as a clearing account, have they not? A. Yes, sir.

Q. And they rather objected to the Company's proposing directly to put it in as a charge to surplus, the part that has already gone by.

Now, what is the procedure that you recommend?

A. My recommendation is, first of all, that the amounts should go to 107, and then be disposed of from 107. I have made recommendations as to that. Now, I presume, in view of the fact that we are in a formal proceeding now, that that matter will be covered whenever the Commission enters its order. If, however, the Company should want immediate action on it, I see no reason why it should not petition the Commission for authority to dispose of those amounts immediately.

Q. As we understand the amenities of the situation at least, we are not supposed to do anything about it until [998] we get some approval or order from the Commission? A. That is right.

Q. And the same would be true about these transfers of capital stock discount and expense that are proposed to be transferred out of plant into Account 151 and 150? A. Yes, sir. [999]

Q. If I understand your procedure, Mr. Van Scoyoc, [1001] in approaching the problem of the disposition of this amount, that you classify in Ac-

(Testimony of Melwood W. Van Scoyoc.)

count 107 as representing the excess cost to Pacific over cost to American, you have given no consideration whatever in your treatment of the matter to what values there may be in the Company's plant at the present time that would be an offsetting element against this \$4,122,173.16?

A. I have not arrived at any relationship between the cost of the physical property and such intangibles as were purchased and present fair value of the Company's property as may be measured through some way of measuring value.

Q. You have considered that the problem is one of purely cost accounting and not one of determination of value, have you not?

A. Yes. I don't think there is any relationship between the cost as recorded on the books of account and the present fair value of the property as might be measured—as Mr. Willard has measured it—by reproduction cost new.

Q. Do you recall, Mr. Van Scoyoc, Mr. Charles W. Smith's testimony in the Northwestern reclassification case?

A. Well, I don't know that I recall the particular part that you have in mind, but I do recall it generally.

Q. I mean in a general way. I am going to read an extract, a small extract of that testimony, and ask if you would subscribe to the views that he expressed there at that [1002] time.

Mr. Slaff: What is the page reference?

Mr. Laing: I am taking it out of the Circuit

(Testimony of Melwood W. Van Scoyoc.)

Court of Appeals, record 490 of the transcript, and probably it laps over on 491:

“The new system of accounts, pursuant to its main theme of requiring a reclassification of plant accounts, provides that write-ups shall be reclassified and included in Account 107. Account 107 will bring the amount of direct inflation to the attention of the Commission. It is the accountant’s duty to bring out the facts. It is the Commission’s duty to see that proper disposition of the write-ups is made after obtaining the facts. The accounting system itself does not provide for the disposition of inflation—it merely provides, to reiterate, for the ear-marking of the accounts thereof.”

I have read enough to give you the background of Mr. Smith’s statement, and what I want particularly to direct your attention to his statement that the accounting system itself does not provide for the disposition of inflation as Mr. Smith had defined it.

A. Yes, I agree with that. I might explain just a little further on that particular point too, that the language of the text of Account 100.5 says that this may be disposed of as the Commission may [1003] approve or direct. Account 107 says this shall be disposed of as the Commission shall approve or direct. There is nothing in the system that says you shall dispose of it this way or another way, but that is left to the discretion of the Commission after hearing all the facts in the matter.

[1004]

(Testimony of Melwood W. Van Scoyoc.)

Q. In other words, the purpose of the system is to endeavor to present the proper data in their proper pigeon-holes, if we may use that expression, so that the Commission, as a matter of policy, may decide after a full review of all the facts and circumstances what properly should be done?

A. That is one of the purposes of the system, of course, to provide information upon which the Commission may act.

Q. So that the disposition of items that get into Account 107 is primarily not an accounting function, is it?

A. The disposition is not an accounting function?

Q. Yes.

A. Do you mean as to accountants disposing of these items?

Q. I mean it is not a function of the accountants, as discussed by Mr. Smith in his presentation in the Northwestern case—it is a matter of the accountants function to present the facts; the question of what should be done upon those facts is a matter for someone else to decide, is it not?

A. Well, the decision rests with the Commission or the management, with respect to the duties of accountants with respect to recording entries, and that sort of thing.

Q. And the determination of what weight shall be given to all the relevant facts and circumstances is a matter [1005] for the Commission to determine as a semi-judicial matter, is it not?

A. Well, as to what consideration shall be given

(Testimony of Melwood W. Van Scoyoc.)

to the testimony, surely, they are acting in that capacity.

Q. And as to what facts and criteria are relevant in that determination, that also is for the Commission to determine, is it not, in the first instance at least?

A. I don't know that I quite get the import of your question, Mr. Laing.

Q. What I am asking you, Mr. Van Scoyoc, is to attempt to delimit the functions of the accountant as distinguished from the problem that is before the Commission when it has to pass upon such questions as the disposition of the amounts in these accounts?

A. Well, as far as my function is concerned, and I think generally the function of accountants on the staff of the regulatory bodies is to make recommendations to the Commission and to acquaint the Commission with their views on these things.

Q. Well, isn't it the accountant's function primarily to determine the cost and other data pertaining to the appearance in the accounts of various items of property and expenses?

A. I would not say that they were limited to determination of costs. [1006]

Q. Well, one thing we are apparently agreed on, and that is it doesn't include any determination of values of property, does it? I mean that is not an accountant's function, is it?

A. Well, they may have to express opinions on

(Testimony of Melwood W. Van Scoyoc.)

values, based on various criteria which are used in that determination.

Q. Well, do you consider that an accountant, as such, and in his capacity as accountant, is either qualified or competent to express an opinion on value, except as might be measured by original cost or some other kind of cost?

A. Well, I would not limit it to the original cost. I would say this to you: that I don't think an accountant is competent to express an opinion as to the reproduction cost of physical property; I will agree with you upon that; but there are other criteria of value, such as capitalization of earning power on which accountant is well qualified to express an opinion.

Q. He certainly could make a computation as to what so many times the net earnings would be; I appreciate that.

A. Surely.

Q. But in so far as it has to do with the determination of some of the elements which conceivably the Commission might consider to be relevant to a determination of what should be done with the balances that are ultimately placed in Accounts 100.5 and 107, the accountant's function does not [1007] comprehend the whole range of data and considerations that the Commission may take into account, does it?

A. In determining values?

Q. Yes.

A. No, sir. [1008]

Q. Now, in your discussion of the amount that you propose to classify to Account 100.5, you are

(Testimony of Melwood W. Van Scoyoc.)

dealing there with items that you recognize as legitimate investments in the property, are you not?

A. I am dealing there with items which were bonafide [1019] payments in arms-length transactions above original cost.

Q. Well then, you would not disagree with my statement that you recognize them as amounts that are legitimately invested in the business?

A. That is right, yes.

Q. And you had the same difficulty that Mr. Neill had in trying to tag the various aspects by particular amounts that made up the—whatever that intangible or whatever those values were, did you not?

A. Yes, that is a very difficult problem. You can draw certain general conclusions from available data; but there may be some variation as between payment for physical property and payment for tangibles, because in some of these cases, at least, we have no knowledge of what was in the minds of the man who was making the purchase; for some of them, we do.

Q. You make the statement in that connection that there was no more reason to retain permanently the cost of an intangible on the books of account than there is to retain the cost of tangible property in the accounts after it has been physically retired. The "it", of course, referring to the physical property, I assume? A. Yes.

Q. Doesn't that statement presuppose that the value, or the intangible, if you call it that, that

(Testimony of Melwood W. Van Scoyoc.)

was legitimately invested in the property, or in the business, becomes a minus [1020] or a disappearing item about as rapidly as the physical property. Now, is that a fair assumption to make?

A. No, I don't believe it is, Mr. Laing. You can buy physical property, and its life, take in the case of land, might be indefinite, perpetual life; and in other property varying all the way from one year to one hundred years, and when that property disappears, you know about it, that is as the physical structures disappear. While, with intangible, the life is so uncertain that it is a matter of speculation to start with as to what the life is, and in many cases, you might have a physical property with a long life associated with a short life intangible, or you may have just the reverse situation. I do not think there is any relationship in buying a going concern consisting of physical properties and intangibles between the life of the physical property and the life of the intangibles.

Q. Well then, you didn't mean to imply that because physical property has a measurable life, perhaps and, of course, should be retired on the basis of that, that there is any reasonably comparable measuring stick for determining the life of the intangible item?

A. No, that was not the purport of my testimony there.

Q. I just wanted to clear what you meant.

A. What I wanted to illustrate was this: that

(Testimony of Melwood W. Van Scoyoc.)

with respect to intangibles, the life is so uncertain, and if you [1021] go on pre-supposing that those things last forever, you are liable to wake up some morning and find them gone suddenly, and you have never made any provision for them. Now, that has happened time and time again in business enterprises. People have thought they had a lot of good will, and the first thing they knew, they didn't have any good will. Take the capitalization of franchise values with respect to street railways; twenty years ago, why, somebody would have paid a lot of money for a good street railway franchise. You probably could not give one away today. They had large intangible values at that time, and unless provision is made to take care of a possible loss, or maybe a fairly certain loss, particularly if it is based on earning power and above what might be called normal on the physical property you are taking a big risk.

Q. Well, isn't there a big risk also involved, Mr. Van Scoyoc, in the assumption that the physical units will have a normal life range in actual operation?

A. Surely, and to take care of most of that risk, at least, except possible loss for casualties, you are accruing depreciation annually to take care of that.

Q. But your normal calculation of depreciation accrual does not usually allow for a very substantial factor of obsolescence or change of style or change of economic conditions, does it? [1022]

(Testimony of Melwood W. Van Scoyoc.)

A. Well, it allows for obsolescence. I don't know that there is—I haven't run into any allowances for changes in economic conditions, unless you might be construing it as changes in art or something of that sort.

Q. What I mean by that is, if you are sitting down today to figure out the depreciation on a piece of steam generating equipment, you would probably calculate that in the normal range that unit would have a life expectancy, or useful expectancy, of, we will say, 35 or 40 years, and you would make your depreciation and accrual calculation on that basis, would you not?

A. Yes, sir.

Q. You would not take into account the possibility that some new form of deriving energy from the sun or some other place would put that piece of equipment out of business in a much shorter time, would you?

A. No. I would take into consideration all the factors that I could visualize which entered into that particular situation. I don't think I would take into consideration the question of the sun replacing the present type of generation; although there have been some developments along that line. But I will illustrate that point a little further: In your depreciation accrual, which is for the Washington Department \$140,000 a year, I believe there is a \$26,000 item in there to take care of the probable [1023] obsolescence, due to the fact that you are going to be able to buy power from Bonneville.

(Testimony of Melwood W. Van Scoyoc.)

Q. In that particular case that was provided for, is that correct?

A. Yes, to take care of those things that you can forecast.

Q. Yes, where you know they are coming?

A. Yes.

Q. But can you visualize with respect to the legitimate items of investments that have been made, such as we speak of here, in Account 100.5, is it your point that you should proceed on the theory that that is all going to go, anyway sometimes, and therefore you ought to get rid of it as you go along?

A. I think that is a sound thing to do, as far as intangibles are concerned, to get rid of them as fast as you can.

Q. But isn't it quite obvious, with respect to—well, we will take a hypothetical case for a moment: Isn't it quite obvious that whereas there might be a million dollars of what you might call intangibles in your definition included in the property accounts as of 1910 and 1915, that by 15 or 20 years from that time the value of the physical property and equipment, and the cost that anybody would have to pay if they bought it at that time as it was [1024] then valued, might balance, to a very large extent, the amount that on your theory was originally intangible? A. Well,—

Q. (Interposing) And it ceases to be as intangible an item as you thought of it originally, doesn't it?

(Testimony of Melwood W. Van Scoyoc.)

A. Well, as far as the cost of the property to the then owners, it certainly was an intangible, regardless of what somebody else might pay years later when the property was a going concern. Take the situation here, I think Mr. Neill's testimony was in 1935 in the Washington Department rate case that going value was a million and a half dollars and here in this case Mr. Willard says it is three million today, and he also has quite a large difference in the value of the physical property. However, I do not see that that has any relationship with what you have in the Pacific Power & Light Company books—what the Pacific Power & Light Company paid for its property, or how its purchase price of a going concern should be divided up.

Q. Well, isn't the thing that is essential, if you are undertaking to suggest what is the wise managerial policy, isn't the thing which is essential to the management to know that the values are being maintained in its properties currently, as time goes on; isn't that the thing that is primarily essential?

A. Well, as far as the Company's accounts are concerned, it is important that any change in the value of those assets, [1025] accountingwise, on its books should be given recognition in the accounts.

Q. What do you mean by the values accountingwise? That is not quite clear to me.

Mr. Slaff: Had you completed your answer?

The Witness: Yes.

(Testimony of Melwood W. Van Scoyoc.)

By Mr. Laing:

Q. Go ahead.

A. Well, I simply mean this: Take your annual accrual for depreciation. Accountingwise it is called a valuation of the assets, annually. You evaluate so much of that cost as against this year's operations and so much against the next year's operations. You don't pay any attention to what some engineer might determine to be the accrued depreciation of the property, as measured by observed depreciation for the year 1940 and attempt to record that on your books. You have to record on your books the depreciation of those particular physical assets on the basis of the cost at which they were required.

Q. Well, from that standpoint, you are concerned with the mere matter of accounting records, regardless of values present or past, are you not?

A. Yes, that is true. We are concerned with what the Pacific Power & Light Company has on its books. [1026]

Q. But from the standpoint of the Company, the Company desiring to maintain itself in a solvent and healthy condition, the thing of prime importance is to be sure at any one time that its values, the values of all of its assets, are equal to its liabilities, including what is set up to surplus or reserve or other liability items, is it not?

A. Well, I think any business enterprise has to know that, or should know it.

Q. So that it gets down, from the standpoint of practical business management, that their value is

(Testimony of Melwood W. Van Scoyoc.)

very much more essential than what kind of figures may have been recorded on its books years ago as cost, isn't it?

A. Well, as far as my thinking on that subject is concerned, cost as recorded on the books is one of the best criteria of value, looking at it from the standpoint of an accountant. Some economist or engineer might have a different concept as to what the value might be.

Mr. Laing: I think we understand each other on that.

Q. I have just one or two more questions, Mr. Van [1027] Scoyoc. Getting back to this investment that was made in Account 100.5, which is now represented by your classification in Account 100.5, you made a suggestion in connection with that, that the amount should be charged up over a period of time. I have lost my memorandum, but you suggested a writing of it off over a period of time by charges to a certain account. Do you recall what your testimony was in that respect?

A. I recommended, I believe, from 10 to 15 years through Account 537, in equal annual installments.

Q. In your previous discussion of the investment in Account 100.5 you recognized that, as I understand, as a legitimate investment in the business, isn't that right?

A. Well, it was a legitimate investment at that time.

Q. In other words, it is all part of the invest-

(Testimony of Melwood W. Van Scoyoc.)

ment which is devoted to public use and service, is it not? A part of the utility?

A. I find a little difficulty in answering that question categorically, Mr. Laing. The investments were made in going concerns, and whether that investment was all dedicated to public service is somewhat questionable in my mind—that is, I am thinking of the idea as to whether it should be a proper part of the rate base. I am thinking in that light.

Q. You recognize it as a legitimate investment in the business that the utility is carrying on, do you not? [1028]

A. I recognize it as a legitimate investment at the time, in acquiring going concerns.

Q. And this Account 537, that is suggested be used for amortization charges, does not have the effect of requiring the utility user to pay any part of the cost of the disappearance of this amount, does it?

A. It does not. As I have treated it for the purpose of disposition, it is not included in what we term the operating income section of the Company's income statement.

Q. In other words, if it were treated the way you recommend, it would not be a part of the operating expenses? The charge would not be a part of the utility operating expenses, would it?

A. That is correct.

Q. Now, you have an account—the Commission has an account in its classification designated as Account 505, does it not? A. Yes, sir.

(Testimony of Melwood W. Van Scoyoc.)

Q. And that account does contemplate the possibility of this very thing that we have just been discussing, does it not?

A. It is an account similar to 537 in that it states that amortization of the acquisition adjustment can be included in there. [1029]

Q. Would you mind reading it, just so we will have it in the record, at this point? A. Yes.

(Reading) "Paragraph 5. Amortization of Electric Plant Acquisition Adjustment. (a) This account shall be debited or credited, as the case may be, with amounts included in operating revenue deductions for the purpose of providing for the extinguishment of the amount in Account 100.5, Electric Plant Acquisition Adjustments, pursuant to approval or order of the Commission.

(b) Amounts recorded in this account shall be concurrently debited or credited, as the case may be, to Account 252, Reserve for Amortization of Electric Plant Acquisition Adjustments."

I think it would probably be well to read this Account 537 in here.

Q. Yes, please do so.

A. (Reading) "537. Miscellaneous Amortization. This account shall include amortization expenses not elsewhere provided for in the System of Accounts, and also such amounts as the Commission may, by order, require to be included herein, such as amortization of amounts in account 100.5, Electric Plant Acquisition Adjustments."

Q. But, at least, one difference between the two

(Testimony of Melwood W. Van Scoyoc.)

accounts for this amortization of electric plant acquisition [1030] adjustments, would be that in the one case, the using up, or wearing out, if we may use that term, of the investments in Account 100.5 is recognized as an operating expense—as a utility operating expense—and, therefore, paid for by the people who have the benefit of the service; whereas, in the other case, that would not be true; isn't that correct?

A. Yes. In using Account 505 it does give such recognition by virtue of the fact that the annual amount is included as an operating revenue deduction, and my thinking on that subject is this: that I do not believe in a proceeding of this kind that there should be sanctioned, or given approval to, an amount to be included in operating revenue deductions which should be charged against the rate payers in Oregon and Washington. In other words, I think that is a matter which is much more appropriately within the province of the regulatory bodies who are actually fixing the rates and who have an opportunity at that time to consider the subject. Furthermore, within this \$2,700,000 which I have made a recommendation for disposition is a great deal of intangibles that I am positive, based upon my examination of the Company's files, are nothing more than good will. In other words, it is merely a capitalization of earning power, and I do not think, under any regulatory concept that I am familiar with, that that is considered a proper thing to be charged against the rate- [1031] payers.

(Testimony of Melwood W. Van Scoyoc.)

Q. Well, you said a little while ago that you recognized it as a legitimate arms-length investment in the business, did you not?

A. Yes, but that doesn't—I tried to distinguish that, Mr. Laing, between a legitimate arms-length investment, looking at it from the standpoint of stockholder and management, and whether or not that investment should be considered a rate base, and I don't think that we can so consider it by any standards of rate making.

Q. Well now, this particular proceeding——

A. (Interposing) First, may I give you a little more on that?

Q. Surely. Just continue.

A. There is another reason that I feel in this particular case influences my thinking that this amount should not be a part of the rate base, because I know two or three of these acquisitions that were made were for the purpose of keeping Byllesby out of the field, or Foshay, or Mr. Welch, from taking possession of some little system, or utility, right in the center of what you consider your territory, and there is competition as between what you will pay and what they are willing to pay for the same property, and from that standpoint, I don't think it would be proper to just say the rate base should include that excess investment over original cost. [1032] I think it is a matter that might very well appropriately be presented to a regulatory commission in a rate proceeding where .

(Testimony of Melwood W. Van Scoyoc.)

opportunity would be had to go into all the benefits which might have accrued by reason of such purchase, if there were any, to the particular rate payers affected.

Q. Now, in this particular case, of course, we are not attempting to fix any rate base, are we, Mr. Van Scoyoc? A. No, sir.

Q. Or attempting to regulate any rates in this particular proceeding? A. That is right.

Q. And as I understand it, the explanation of your suggesting that these amortization charges be made to Account 537, rather than to 505, it is that the determination of any amortization which should go into Account 505 should be made by either the Oregon or the Washington Commissions, is that right?

A. Well, I think in a rate proceeding, if your company makes a claim, as it did in the Washington case, for example, which was disallowed by the Washington Commission, and finally went to Court, that as to this excess between original cost, as they determined it in that proceeding, and the investment of the American Power & Light Company, that that is a proper place to consider the matter.

Q. Well, as I read this classification and the [1033] definition of Account 505 of this classification, which I believe is Exhibit No. 1 in this proceeding; is it, Mr. Slaff?

Mr. Slaff: I think it is in evidence in the proceedings by reference. I am advised, at least, that it is in the proceedings.

(Testimony of Melwood W. Van Scoyoc.)

By Mr. Laing:

Q. The term "Commission" where used in that classification applies to the Federal Power Commission, does it not? A. Yes.

Q. So that if we should have a rate case out here in Oregon, for example, and the Commissioner, after full consideration of all the circumstances, were faced with a proposal that some part of this Account 100.5 investment should be amortized by charges through Account 505, and he should be convinced that that should be done, we still wouldn't have satisfied the requirement of this reclassification, would we, by pursuing that arrangement?

A. Well, I think the Federal Power Commission, if a situation such as that arose, would give a very good deal of weight to the findings of the Oregon Commissioner, it seems to me, in that respect, or to any other state commission.

Q. As the classification and the situation stand, [1034] you might easily have one of these bodies deciding that it was proper and the other one deciding that it was improper, might you not?

A. Based upon my 14 years experience in this particular work with the regulatory agencies, both state and federal, I don't visualize any such possibility.

Q. You have heard the statement that reasonable men disagree once in a while?

A. Surely, I think there are differences of opinion; but whether they may be expressed in formal

(Testimony of Melwood W. Van Scoyoc.)

orders and contrary one to another is something else.

Q. I am just wondering what sort of a quandary the Company might be in if the Federal Power Commission said No and the Oregon Commissioner said Yes to such a proposal.

A. Well, that would be pure speculation on my part.

Q. It might be on ours too.

A. So far, we have gotten along very well.

Mr. Laing: That is all.

Trial Examiner: Have you any questions, Mr. Foley?

Mr. Foley: I feel further cross examination would only develop or emphasize our differences of opinion, which seems to be fairly well established.

As regards the proposition for the disposal of items in 107, I feel that involves legal questions as to which opinion [1035] evidence of a witness is probably incompetent, irrelevant and immaterial, and I will not cross examine.

Trial Examiner: I think, Mr. Foley, that there is perhaps some merit in what you say. However, it occurred to the Examiner that no one would be so naive as to believe that the proceedings would be disposed of ultimately without conference at least by the Commission with the members of the Commission's staff; and I think it is well to place before you at this time the thoughts of the staff of the Commission and afford you an opportunity to

(Testimony of Melwood W. Van Scoyoc.)

explore those thoughts; and that is the reason that the Examiner permitted this testimony; and I think that while it is permitted against your will, it would be more helpful than harmful.

Mr. Slaff: That, I might observe, is precisely why we presented this testimony by Mr. Van Scoyoc as to disposition, so that we could get right at the outset the views of the Commission's staff as to how the matter should be handled, and if the respondent or intervener chose to explore those views they could do so at such length and to such purpose as they might deem fit.

Trial Examiner: Do you have any redirect?

Mr. Slaff: I have no redirect of Mr. Van Scoyoc. [1036]

CHARLES W. SMITH

called as a witness on behalf of the Commission, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Slaff:

Q. Will you give your name to the reporter,
Mr. Smith? A. Charles W. Smith.

Q. What is your business?

A. I am Chief of the Bureau of Accounts, Finance and Rates of the Federal Power Commission.

Q. Will you please state now your background

(Testimony of Charles W. Smith.)

of education and experience relevant to this proceeding?

A. I have a B. S. degree in finance and business administration and, also, hold an L.L.B. degree. I am a certified public accountant of North Carolina and of Maryland, the first having been obtained about eighteen years ago. I am a past president of the Maryland Association of Certified Public Accounts and a member of the American Institute of Accountants, the American Accounting Association, the American Economic Association, the American Bar Association, and an honorary member of Delta Sigma Pi, an international commerce fraternity, the Alpha Beta Psi, a national accounting fraternity. I am also a member of the Committee on Statistics [1037] and Accounts and of the Committee on Depreciation of the National Association of Railroad and Utilities Commissioners. I have been admitted to the bars of the Court of Appeals of Maryland and the Supreme Court of the United States.

Q. How long, by the way, have you been a member of the two committees of the National Association of Railroad and Utilities Commissioners?

A. I was a member of the Committee on Statistics back in 1933 or 1934, I believe. In 1935 I resigned my membership because I was associated with the Federal Power Commission, and the Chief Accountant of the Commission was also a member of that committee, and I didn't think two of us should represent the same agency. I again became

(Testimony of Charles W. Smith.)

a member of the committee in about 1937 or 1938. I have been a member of the depreciation committee for three years.

Q. Will you continue, please?

A. For nine years I was an auditor in the Income Tax Unit of the U. S. Treasury Department and, in this capacity, I audited the income tax returns and books and records of practically every type of business corporation, including public utilities. On June 1, 1929, as the result of obtaining the highest mark in a competitive examination, I became the Chief Auditor of the Public Service Commission of Maryland, remaining in that position for seven years. I joined the staff of the Federal Power Commission on July 1, [1038] 1936, in substantially my present capacity.

Q. The title was something else at the time you joined, but the duties were substantially the same?

A. The duties were substantially the same. Since I joined the staff of the Commission more work has been transferred to me from other divisions, as a matter of fact, but my duties are substantially the same as when I first went there.

Q. Proceed, please.

A. For ten years I taught accounting in evening schools in Baltimore, including eight years at Johns Hopkins University when I gave the course in accounting systems and for two years the course in cost accounting. These courses were for day and evening students both.

While with the Maryland Commission, I did a

(Testimony of Charles W. Smith.)

good deal of work as consultant in accounting, taxation and finance in my spare time. On one occasion, I obtained leave of absence to do some work of a consulting nature for the Tennessee Valley Authority; and on two other occasions I was granted leave to act as consulting accountant to the Federal Power Commission.

Q. What was the nature of your consulting work for the T. V. A.?

A. It was for the purpose of reviewing the accounting system of T. V. A. and reviewing a proposed new system which [1039] T. V. A. proposed to install.

Q. And what consulting have you done while with the Maryland Commission and with the Federal Power Commission?

A. On two occasions, I was retained by the Federal Power Commission as a consultant. I supervised the drafting of a uniform system of accounts, which the commission later prescribed for public utilities, the system which is involved in these proceedings. I have also obtained one leave of absence from the Federal Power Commission to act as consultant to the Civil Service Commission of New York in connection with the grading of senior public service commission accountants and rate case experts.

I have written several articles on accounting and economic subjects, including a text on accounting systems for my classes at Johns Hopkins. I under-

(Testimony of Charles W. Smith.)

stand that the letter text is still being used. I have delivered a great many lectures, more than fifty, on accounting, financial and economic subjects, including two radio addresses.

While in the employ of the Public Service Commission of Maryland, I had charge of all accounting, auditing and financial matters which were under the jurisdiction of that body. This included the making of the usual accounting investigations for all regulatory purposes, all studies relating to the issuance of securities, financial structures, rate of return, and so forth. [1040]

In my present position, I have charge of four divisions of the Federal Power Commission, namely, the Division of Accounts, Division of Finance and Statistics, Division of Rates and the Division of Original Cost. I organized the Division of Original Cost for the Commission and have participated most actively in supervising the work of that division. For instance, Mr. Van Scoyoc, Chief of that Division, and I determined jointly when the reclassification study of the Pacific Power & Light Company should be investigated and we determined jointly the men who should be in charge of the field work. I have kept in close touch with the work since it started.

Q. And in connection with your duties for the Federal Power Commission, do you have duties in connection with interpreting the system of accounts regularly?

(Testimony of Charles W. Smith.)

A. Yes, I issue interpretations of the system of accounts over my own signature.

Q. Those go to your staff people and others on the staff of the Commission?

A. They go to the staff of the Commission, and they go to the utilities as well.

Q. Mr. Smith, you have approved the staff report identified as Exhibit No. 16 in this case, have you not? A. I have.

Q. There is now proposed by the staff to be included [1041] in Account 107 the amount of \$4,122,-173.16. Do you agree with this classification?

A. I do.

Q. Why?

A. Because the amount represents the profits to an affiliated seller, and affiliated company profits in the plant accounts are properly classifiable in Account 107 until disposed of as approved or directed by the Commission.

Q. Why do you believe affiliated company profits in the plant accounts should be classified in Account 107?

A. The text of Account 107 reads as follows:

“This account shall include the difference between the original cost, estimated if not known, and the book cost of electric plant, at the effective date of this system of accounts, to the extent that such difference is not properly includible in Account 100.5, Electric Plant Acquisition Adjustments. Write-ups of electric plant prior to the effective

(Testimony of Charles W. Smith.)

date of this system of accounts shall be recorded herein."

In my opinion, the amount mentioned represents a writeup; hence is includible in Account 107.

Q. On what do you base your statement that the amount is a write-up?

A. There are many ways of accomplishing write-ups. One of the favored ways practiced by public utilities has [1042] been through sales from one affiliated company to another. When transactions are between affiliates, the buyer and the seller, for all practical purposes, are the same. In a real sense the money is taken from one pocket and put in another. Accountants, for as long as I can remember, have eliminated such profits in the preparation of consolidated financial statements. The Federal Trade Commission, in its investigation covering public utility companies, referred to such items as write-ups and as inflation. Ever since I have known anything about regulatory accounting, items of the nature I am discussing have been considered write-ups. I have always considered them to be such and I have always eliminated them from the plant accounts. In other words, the amount of \$4,122,-173.16 is not a cost to the accounting utility in the proper sense of that term. Instead, it is an inflationary item.

Q. You say the amount is not a cost in the proper sense of that term. I take it, then, that it is not a cost as used in the text of Account 100.5, wherein it is stated generally that the amounts included in

(Testimony of Charles W. Smith.)

that account represent the difference between cost to the accounting utility and original cost?

A. That is correct. The term "cost" as applied to the accounting utility does not, in my opinion, include payments for profits to affiliated sellers.

[1043]

Q. Is the term "cost" defined in the Commission's Uniform System of Accounts, and if so, what is that definition?

A. "Cost" means the amount of money actually paid for property or services or the cash value at the time of the transaction of any consideration other than money.

Q. What makes you think the definition of "cost" does not include payments for profits to affiliated sellers?

A. The term "cost" in a sense is a word of "art", as the lawyers say. It necessarily means legitimate cost. This is the accounting meaning, I am sure. If a cost is not found to be proper, accountants will not recognize it, even if a payment were actually made. In addition, our System of Accounts provides (General Instruction 2F) that all charges to the plant accounts shall be just and reasonable. So-called costs which represent payments of affiliated company profits are not just and reasonable, and certainly they could not be just and reasonable, when a public utility is the purchaser. As I have indicated before, I have never recognized such payments as proper cost under any system of accounts, and I

(Testimony of Charles W. Smith.)

know of no public service commission accountant who has recognized them as such.

The Federal Power Commission has been dealing with the word "cost" for a great many years. Under the Federal Power Act the Commission has been determining the actual legitimate original cost of licensed projects since 1920, [1044] according to the 1914 classification of accounts issued by the Interstate Commerce Commission. As a matter of fact, the Federal Power Act requires that the latter system be published along with any system promulgated by the Commission for licensees. The Federal Power Commission has never determined that the word "cost" included affiliated company profits. On the contrary, it has steadfastly maintained that affiliated company profits were not includible in the cost of licensed projects. In one case involving the Alabama Power Company, the Commission disallowed affiliated company profits and was sustained by the Court of Appeals for the District of Columbia, The Commission's decision was made in 1932. I think the staff report was made in about 1930, a good many years before I joined the staff of the Federal Power Commission. The action of the Federal Power Commission, as I have indicated, has been consistent, and has been in accordance with recognized accounting principles.

Mr. Laing: May I interrupt a moment, Mr. Smith? I was just interested to know for the sake of the record whether the case Mr. Smith is referring to is this case, (indicating volume of Federal Law

(Testimony of Charles W. Smith.)

Reports). If that is the case, perhaps you can cite it in the record.

The Witness: Yes, that is the case.

Mr. Laing: Would you kindly give the citation?

The Witness: That is the case of Alabama Power Company [1045] vs. McNinch, 94 Federal 2d, 601.

Mr. Laing: Thank you very much.

A. (Resuming) I might add that one of the chief reasons for prescribing the new system of accounts adopted by the Commission in 1936 was to correct the conditions disclosed by the Federal Trade Commission in its investigations of public utilities. It will be recalled that the Federal Trade Commission exposed large write-ups in public utility plant accounts. The reports of that Commission were chiefly responsible, I believe, for the Public Utility Act of 1935, which act, among other things, gave the Federal Power Commission jurisdiction, generally speaking, over electric utilities engaged in interstate commerce. To have given the word "cost" any different meaning in the System of Accounts than that ascribed to it in my present testimony would be to defeat one of the chief purposes of the System of Accounts. Thus, I believe it abundantly clear that where an operating utility pays more than the cost of operating units or systems to an affiliated seller, the amount paid as profit to the seller clearly belongs in Account 107 in the operating utility's books of account.

Q. Mr. Smith, what is the nature of the amounts includible in Account 100.5?

(Testimony of Charles W. Smith.)

A. As the text of that account provides the difference between cost to the accounting utility and the original [1046] cost relating to the acquisition of operating units or systems are includible in that account. Our experience indicates that normally the amounts are debit items, and I shall have debit items in mind in speaking hereafter of amounts in that account. These debit amounts represent the cost of tangible or intangible property, and in some cases a single purchase may involve amounts classifiable in part to each item.

Q. What in your opinion is the maximum amount of any purchase price which might be assigned to tangible property?

A. The very maximum or ceiling is represented by the cost of reproduction less depreciation. I would like to indicate clearly, as Mr. Van Scoyoc has also pointed out, that the cost of reproduction less depreciation is not a full and complete determinative of the part of the purchase price assignable to tangible property, but rather it represents the maximum so assignable. Any cost in excess of the amount which would be required to purchase the same or similar articles as mere physical articles and not as a going concern, represents the cost of intangibles. The estimated reproduction cost less depreciation, however, might be greatly in excess of the cost of the tangible property. In other words, reproduction cost less depreciation is not a sole guide but is useful in determining the maximum

(Testimony of Charles W. Smith.)

part of a purchase price which in given cases can be assigned to [1047] tangible properties.

Generally speaking, it is my experience that the excess of cost to an accounting company over original cost represents the cost of an intangible. This is so because by their very nature physical properties are subject to depreciation. Depreciation is the inexorable law as to them. As stated by one author, all machinery and equipment are on an irresistible march to the junk heap. I have had much experience in observing the sales of physical properties, and this experience demonstrates conclusively to me that only in extremely rare cases do we find such property selling at more than original cost when they are not attached to going businesses. Hence depreciation rather than appreciation is the force which is constantly operating on physical properties.

Q. Assuming that the amounts classifiable in Account 100.5 in this case represent the costs of intangibles, how should the amounts be disposed of in your opinion?

A. The amounts which the staff recommends be included in Account 100.5 represent acquisitions made in 1910 and 1930, although the latter acquisitions go several years back of 1930 when the properties involved were purchased by an affiliated seller. Hence these intangibles have been on the books a long time. I agree that we speculate when we try to determine the exact nature of the intangibles. Generally, the intangibles, consisting of good will,

(Testimony of Charles W. Smith.)

going value, [1048] franchise value, monopoly value, nuisance value, et cetera, which are all rooted in prospective earning power, merge and blend into one when it comes to public utilities. Such values are most unstable. They have no permanent place in the accounts of a public utility. We should not assume that the prospective earnings will always be higher than the earnings on proper plant costs, exclusive of intangibles. In my opinion all amounts in the plant accounts should be charged off some time. The cost of physical items should be removed when the properties with which they are associated are retired. Intangibles are evasive and disappear without being seen. We only perceive the result of their disappearance. Thus rapid charge-offs of intangibles are required, I believe, by good accounting, good management and good regulation. Customers pay high rates; high rates result in high returns; high returns result in the purchase price being high for intangibles, and then it is sometimes said these intangibles, because they have been paid for by the acquiring company, go on forever. We are reasoning in a vicious circle when we reason in this manner. I think the only fair thing, the only proper thing, from the viewpoint of accounting, is to charge such amounts off quickly. It is the public policy in a good many states that no amounts should be kept alive as franchise costs in excess of the amounts paid to the governmental agency. We should not permit amounts which [1049] represent

(Testimony of Charles W. Smith.)

franchise costs to be buried in some other accounts in opposition to this public policy. As I have indicated, public utility intangibles sort of merge or blend together, prospective earnings being the important thing; these are often geared to franchise rights.

The quicker the amounts representing the cost of intangibles are charged off, the quicker the improvement will be realized in the financial structure of the company. The sounder the corporation is financially, the easier it is for commissions to do their regulatory job, the better it is for the customers, and the better it is for investors. The smaller the amount a public utility corporation has in its balance sheet for such intangibles as I have mentioned, the sounder that corporation is—all other things being equal.

The amounts I am discussing have been in the accounts of the Pacific Company for a very long time. The conditions under which the properties were bought will not go on forever. Changes are constantly taking place. New forces, new inventions, new economic conditions prevail. I think, therefore, that these amounts which have already rested in the accounts a very long time ought to be disposed of quickly. It is my opinion that they should be disposed of over a period not in excess of 10 or 15 years at the most.

In the public utility field earnings are based upon [1050-51] plant. There is great possibility that these intangibles which, as I have indicated, have

(Testimony of Charles W. Smith.)

been carried on the books for a long time, and which relate pretty largely to conditions in the past, may have no value whatsoever for the purposes of rate making or for security purposes. If that be true, then these amounts represent unrealizable costs. In other words, in the public utility accounting field we ought to be particularly cautious and not carry in the plant accounts items concerning which there may be grave question as to validity.

Q. To what account should the amortization of amounts representing the cost of intangibles, included in account 100.5, be charged if the Commission should approve an amortization plan such as you have suggested?

A. The amounts I believe should be amortized by charges to Account 537, Miscellaneous Amortization. I believe the best accounting practice is to charge off the cost of intangibles to the final section of the income statement, and Account 537 seems most appropriate in this connection.

Q. Mr. Smith, you have already testified as to one amount which you state should be included in Account 107, namely, the amount of \$4,122,173.16. The text of Account 107 provides that the amount therein shall be disposed of as the Commission may approve or direct. The company has submitted no plan for disposing of that amount. What [1052] disposition do you recommend?

Mr. Laing: Mr. Examiner, I wish at this time to make the same objection made before to similar

(Testimony of Charles W. Smith.)

questions and testimony offered in connection with Mr. Van Scoyoc.

Trial Examiner: Very well. The objection is overruled.

A. (Continuing) As far as accounting principles are concerned, I believe the amount should be written off either to Earned Surplus or to Capital Surplus immediately. The item has no place in the accounts of the Company. I have indicated as clearly as I can an operating public utility should not reflect in its plant accounts profits paid to an affiliated company. If the amount does not represent a proper cost of plant, it does not represent the cost of any asset. As a matter of policy, and not as a matter of accounting, the Commission may depart from the best accounting practice by considering special circumstances. The Commission may conclude that as a matter of policy it should give special consideration to the position of the preferred stockholders. An immediate charge-off against Earned Surplus might have the effect of preventing payments of dividends on preferred stock for some time in the future. To prevent this condition from coming about, the Commission may resort to what is sometimes termed "regulatory expediency" and require rapid amortization of the amount instead of an immediate charge-off. [1053] If the Commission should decide not to order an immediate charge-off, I am sure it will take appropriate steps, and I would recommend appropriate steps be taken to prevent the payment of common

(Testimony of Charles W. Smith.)

stock dividends until the amount has been disposed of.

By Mr. Slaff:

Q. Is your opinion based solely upon the provisions of the Commission's Uniform System of Accounts?

A. No. My answer would hold under any system of accounts. The amounts should never have been lodged in the plant accounts, in my opinion. Our System of Accounts requires the classification of the amounts in Account 107. In recommending an immediate charge-off I am not doing so because of any peculiar provisions or characteristics of the Commission's accounting system, but rather under general principles of accounting, particularly regulatory accounting.

Q. Do you think the fact that these transactions were entered into many years ago justifies retention of them in the accounts of the Company?

A. No. The Company has been a public utility since its inception. All of its transactions must have been entered into with the full recognition that it was subject to whatever direction future regulation might take. The lapse of time cannot give any greater validity to the transactions than they enjoyed when they were entered into. I [1054] have already indicated that in my opinion the amounts in question should never have been recorded in the books of account of the Company. It follows that I do not believe the fact that these items were recorded years ago and that a long time

(Testimony of Charles W. Smith.)

has since elapsed is any argument for their retention.

Q. Just one more question. In his testimony, Mr. Van Scoyoc discussed certain other specific adjustments which you have not covered specifically in your testimony. I should like to inquire of you whether you agree with Mr. Van Scoyoc's testimony and his recommendation.

A. I do. [1055]

CHARLES W. SMITH

called as a witness on behalf of the Commission, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination

By Mr. Laing:

Q. I have just a few questions I want to ask you, Mr. Smith, and it is, primarily, for the purpose of getting the record clear on one particular point. You spoke, in your testimony, Mr. Smith, about the fact that the Federal Power Commission had been dealing with the word "cost" for a good many years; under the Federal Power Act, the Commission had been dealing with "actual legitimate original cost", licensed projects since 1920, in accordance with the definitions of that act, or requirements of that act. That is the act that was originally referred to as the Federal Water Power Act, and was amended in 1935 to become the Federal Power Act, was it not?

(Testimony of Charles W. Smith.)

A. Yes; that is correct.

Q. And that act, as it stood, prior to 1935, related exclusively to licensing of projects to be built on either [1056] navigable streams or lands that were under the control of the Federal Government, did it not?

A. Yes, sir.

Q. And the general scheme of that act with respect to licenses was to provide, was it not, for license agreements between the Federal Government and the licensee, setting out the terms and conditions under which the licensee would be permitted to occupy either the bed of a navigable stream or occupy Federal land?

A. I think that is correct.

Q. And that license was in the nature of a contract, then, was it not, between the licensee and the Government?

A. I don't know whether it was a legal contract, but it certainly was an agreement in that, before the license could become effective, it had to be accepted by the licensee.

Q. And one of the stipulations or conditions, provided by the act with respect to such license, was in the following language, which I shall read and see if you agree with it. I will quote from Section 6 of the Act.

“Which such license shall be conditioned upon acceptance by the licensee of all the terms and conditions of this act, and such further conditions, if any, as the Commission shall prescribe in conformity with this act, which said terms and conditions

(Testimony of Charles W. Smith.)

and the acceptance thereof shall be expressed in such license.” That is the end of the quote. That was a [1057] part of the scheme of things under which these licenses were issued, was it not?

A. Yes, sir.

Q. And the act also provided for a right of recapture by the Government of the project, at the end of the license period, on paying the net investment to licensee? A. That is correct.

Q. And the net investment was defined in the act as,—the effect of it was, actual legitimate cost, less removals and depreciation, and things of that kind?

A. Yes, less the depreciation reserve and surplus earnings, and a few items of that nature. The statement was just made that the projects were recapturable on the payment of the net investment. I don’t know whether the provisions dealing with,—that is, less than the net investment, with a qualification I would like to make, and with the exception of that qualification, the general statement is correct.

Q. But there is a limitation that it could not be more than the net investment?

A. There was a limitation that it could not be more than the net investment.

Q. And if it was worth less, they did not have to pay the higher sum? A. That is correct.

Q. The actual legitimate original cost was a word [1058] of art in this act, also, was it not?

(Testimony of Charles W. Smith.)

A. I think that referred to the ICC system, Mr. Laing.

Q. The term "cost" there was refined as including, insofar as applicable, the elements prescribed in the Interstate Commerce Commission's classification, isn't that correct?

A. Yes, sir.

Q. But the phrase, "actual legitimate original cost," was the keystone of the whole matter so far as it applied to the recapture and other provisions, was it not?

A. The actual legitimate original cost is the language of the act itself, but the act said the cost shall be determined according to the elements mentioned in the ICC system. The words "actual legitimate original cost" did not appear in the ICC system. The word which does appear is the word "cost". At least, as far as I see it, they were in its classification.

Q. And the act further qualifies "cost" by its being the actual legitimate original cost, does it not?

A. That is the language of the act; yes, sir.

Q. In other words, the term "original" is an additional qualification of the word "cost", as defined in the Interstate Commerce Commission's classification, is it not?

A. The word "original" appears in the act, but it does not appear in the ICC classification.

Q. In other words, the act added that additional

(Testimony of Charles W. Smith.)

[1059] qualification of the kind of cost that had to be used, did it not?

A. I think it meant what was contemplated by the ICC system; otherwise, there would have been no need to refer to the ICC system, it seems to me.

Q. Well, it referred to the ICC system, did it not, for the purpose of defining "cost"; isn't that what the act did? A. I think so.

Q. And again, referring to the definition of "net investment" in Section 3 of the Federal Water Power Act, June 10, 1920, the term "cost" "shall include, as far as applicable, the things prescribed in the Commission's classification," isn't that right?

A. Yes, I think you are right. The staff, certainly, however, has not determined, or it has not been operating under the viewpoint that the word "original" modified or restricts the word "cost", as contained in the ICC system.

Q. I see. Well, at all events, the point that I really wanted to clarify was that so far as the application of the expression "original cost" by the Federal Power Commission, prior to 1935, it was confined to dealings with licensees who had contracts with the Governments, was it not?

A. That is correct. [1060]

Q. And, insofar as legislative compulsion, if we could call it that, applied the term "original cost" to the operations of utilities other than licensees, that came about for the first time after the jurisdiction of the Commission was extended to the interstate electric utilities in 1935, and the Commis-

(Testimony of Charles W. Smith.)

sion adopted its Uniform System of Accounting; isn't that true?

A. Yes, that is true. By the first time, do you mean the first time under the jurisdiction of the Federal Power Commission?

Q. That is right. I mean there was no state or Federal law—rather, there was no Federal law or administrative regulation prior to 1935 which made “original cost” the controlling factor in the classification of accounts of interstate electric utilities, was there? A. That is correct. [1061]

JOHN J. O'NEIL

recalled as a witness on behalf of the Commission, having been previously sworn, resumed the stand and testified further as follows:

Further Redirect Examination

By Mr. Slaff:

Q. Mr. O'Neil, I would like to call your attention to a question and answer at page 961 and page 962 of the transcript, the following question and answer on your cross examination occurred:

“Question: So the whole thing boils down in your mind to the fact that the American in 1910 was momentarily the owner of all the securities which the Pacific issued and exchanged for the properties which American turned over to Pacific at that time; isn't that true?”

“Answer: That is essentially correct, yes.”

Now, I want to inquire of you as to this: Assume

(Testimony of John J. O'Neil.)

that American had never owned the bonds and preferred stock of Pacific; that those had been disposed of by Pacific direct to the public, would that have affected your determination that the transaction involved a write-up to the same extent that you have already testified it involved such a right?

A. No. My answer would not have changed. It so happened that, in stating the question, Mr. Laing outlined [1062] all the circumstances that were peculiar to the 1910 transaction; but it is not the accumulation of all those that makes for the declaration of the amount as a write-up. The transfer of the properties could have been effected through a loan account, and Pacific subsequently sell its own bonds and its own preferred stock and pay off the loan, it is the controlling element there that resolves itself down to a write-up.

Q. In other words, is it true that there are several forms, or mechanical processes through which the deal could have been carried out and still arrive at the same kind of a write-up, which, in your judgment, did occur?

A. That is correct.

Q. Just one other thing: Assume that at some time subsequent to this transaction, American had sold off the common stock in Pacific, and all other factors remain the same to date, would you still consider that a write-up had occurred at the time of the transaction?

A. Oh, yes. A write-up had occurred, even in spite of the fact that American might have subse-

(Testimony of John J. O'Neil.)

quently sold off the common stock, which write-up is still on the books today.

Mr. Slaff: That is all I have.

Mr. Laing: No question. [1063]

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,386

PACIFIC POWER & LIGHT COMPANY, and
AMERICAN POWER & LIGHT COMPANY,
Petitioners,

vs.

FEDERAL POWER COMMISSION,
Respondent.

CERTIFICATE OF SECRETARY OF FED-
ERAL POWER COMMISSION TO TRAN-
SCRIPT OF RECORD

I, Leon M. Fuquay, Secretary of the Federal Power Commission and official custodian of the records of said Commission, do hereby certify that the attached are true copies of:

- (1) Transcripts of hearing held May 20, 21, 22, 23 and 24, 1940
- (2) Transcripts of hearing held September 29 and 30, 1941, October 1, 2, 3, 4, 6, 7 and 8, 1941

- (3) Exhibits introduced in evidence at the hearings held on May 20, 21, 22, 23 and 24, 1940, as follows:

Exhibit

No.	Description
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- | | |
|---|---|
| 1 | Federal Power Commission Order No. 42, dated June 16, 1936, entitled "Prescribing a System of Accounts for Public Utilities and Licensees under the Federal Power Act," which order incorporates the system of accounts therein prescribed. |
| 2 | Federal Power Commission Order No. 43 dated December 31, 1936, entitled "Amending the Uniform System of Accounts Prescribed for Public Utilities and Licensees by Order No. 42, and Adopting and Adding thereto Appendix III applicable to Class C and Class D Public Utilities and Licensees." |
| 3 | Federal Power Commission Order No. 45, adopted January 13, 1937, entitled "Prescribing a List of Units of Property for Use in Connection with Uniform System of Accounts." |
| 4 | Answer of Pacific Power & Light Company to the Commission's order to show cause of April 16, 1940, filed with the Commission on May 18, 1940. |
| 5 | Federal Power Commission's order of May 11, 1937. |

Exhibit

No. Description

- 6 Map entitled "Territory Served by Pacific Power & Light Company" dated December, 1936.
 - 7 Pacific Power & Light Company's petition, dated December 20, 1939, for an extension of time to July 1, 1940.
- Note: Exhibits 1, 2, 3, 4, 5 and 7 were admitted in evidence by reference.
- 8 "Communications between Federal Power Commission and Pacific Power & Light Company relative to Compliance with Electric Plant Instruction 2-D and with the Commission's order adopted May 11, 1937 (except Order to Show Cause dated April 16, 1940)".
 - 9 "Memorandum Concerning Present Status of Plant Classification Work of Pacific Power & Light Company Required by the New System of Accounts of Federal Power Commission and Public Utilities Commissioner of Oregon"; dated June 15, 1939.
 - 10 Telegram dated November 22, 1938, from A. J. Stutzman to H. H. Scaff, Ebasco Services, Inc., 2 Rector Street, New York.
 - 11 8 sheets entitled "Statistical Information Relative to Electric Plant" applicable to "Production Plant" and "Transmission Plant" of Pacific Power & Light Company.

Exhibit

- | No. | Description |
|-----|---|
| 12 | A series of seven letters: Four from Will T. Neill to the Public Utilities Commissioner, Salem, Oregon, dated August 29, 1938, August 22, 1938, August 19, 1938, and August 12, 1938, respectively; and three from the Public Utilities Commissioner of Oregon to Pacific Power & Light Company, dated August 27, 1938, August 10, 1938, and July 28, 1938, respectively. |
| 13 | Letter from Ormand R. Bean, Public Utilities Commissioner of Oregon to Pacific Power & Light Company, dated December 11, 1939. |

- (4) Exhibits introduced in evidence at the hearings held on September 29 and 30, 1941 and October 1, 2, 3, 4, 6, 7, and 8, 1941, as follows:

Exhibit

- | No. | Description |
|-----|--|
| 14 | Letter dated July 1, 1940 from Will T. Neill, Vice President of Pacific Power & Light Company to Federal Power Commission. |
| 15 | "Pacific Power & Light Company, Reclassification of Electric Plant, Statements A to I Inclusive." |

Exhibit

No.	Description
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|------|---|
| 15-A | Four maps showing territory served by Pacific Power & Light Company at December, 1910, March, 1915, November, 1924 and December, 1936 together with a statement of Will T. Neill, Vice President of Pacific Power & Light Company, with respect to said maps. |
| 16 | "Report on the Reclassification and Original Cost Studies of Electric Plant, as at January 1, 1937" of Pacific Power & Light Company by the staffs of the Federal Power Commission and the Public Utilities Commissioner of Oregon. |
| 17 | Volume, dated September 26, 1941, containing Pacific Power & Light Company's revised Reclassification of Electric Plant Statements "B", "E", "F", "G", "H" and "I". |
| 18 | Letter dated September 27, 1941 from Will T. Neill, Vice President of Pacific Power & Light Company to Federal Power Commission transmitting copy of Exhibit 17. |
| 19 | Corporate Development Diagram of Pacific Power & Light Company. |
| 20 | Minutes of Special Meeting of Board of Directors of Pacific Power & Light Company held on July 23, 1910. |

Exhibit

- | No. | Description |
|-----|--|
| 21 | Minutes of Special Meeting of Board of Directors of Pacific Power & Light Company held on July 29, 1930. |
| 22 | Letter dated July 23, 1910 from S. Z. Mitchell to Guy W. Talbot. |
| 23 | Western Union Night Letter dated December 16, 1911 from F. G. Sykes to Guy W. Talbot. |
| 24 | Minutes of Special Meeting of the Board of Directors of Pacific Power & Light Company held on December 22, 1911. |
| 25 | Telegram dated December 17, 1913 from F. G. Sykes to Guy W. Talbot. |
| 26 | Minutes of Special Meeting of Board of Directors of Pacific Power & Light Company held on December 30, 1913. |
| 27 | Letter dated June 4, 1924 from C. E. Groesbeck to Guy W. Talbot. |
| 28 | Letter dated July 10, 1926 from Frank Silliman, Jr. to Guy W. Talbot. |
| 29 | Western Union Telegram dated December 21, 1927 from Frank Silliman, Jr. to Guy W. Talbot. |
| 30 | Western Union Telegram dated April 11, 1929 from Guy W. Talbot to Frank Silliman, Jr. |
| 31 | Western Union Telegram dated April 13, 1929 from Frank Silliman, Jr. to Guy W. Talbot. |

Exhibit

- | No. | Description |
|-----|---|
| 32 | Telegram dated June 16, 1910 from Simpson, Thacher and Bartlett to Neil A. Weathers. |
| 33 | Statement of Original Cost of Properties of Inland Power & Light Company as at March 31, 1937, which statement was introduced in evidence as Exhibit 8 in Federal Power Commission proceeding Docket No. IT-5469. |
| 34 | Minutes of a meeting of the Executive Committee of American Power & Light Company which was held on June 13, 1910. |
| 35 | "Statement of Cost to American Power & Light Company of common stock of Pacific Power & Light Company, as computed from statements prepared by D. W. Jack, Treasurer of American, furnished to staff of Federal Power Commission." |
| 36 | Letter dated September 10, 1940 from Will T. Neill, Vice President of Pacific Power & Light Company to John J. O'Neil transmitting "Statement of American Power & Light Company's Investment in the Companies and properties transferred to Pacific Power & Light Company at the formation of the latter company in 1910" together with said statement. |

Exhibit

No. Description

- 37 Letter dated December 27, 1940 from Will T. Neill, Vice President of Pacific Power & Light Company to James H. Flynn; letter dated December 23, 1940 from D. W. Jack, Secretary and Treasurer of American Power & Light Company to Will T. Neill; and "Statement of American Power & Light Company's Investment in the Companies and Properties transferred to Pacific Power & Light Company at the Formation of the latter Company in 1910."
- 38 Letter dated May 9, 1941 from Will T. Neill to James H. Flynn; letter dated April 29, 1941 from D. W. Jack to Will T. Neill; and statements with respect to American Power & Light Company's purchase of Condon Electric Company and Heppner Light & Water Company.
- 39 Letter dated May 9, 1941 from Will T. Neill to James H. Flynn; letter dated April 29, 1941 from D. W. Jack to Will T. Neill; "Statement of American Power & Light Company's Investment in Companies and Properties transferred to Pacific Power & Light Company in 1911;" and "Statement of American Power & Light Company's Investment in the Hydro Electric Company transferred to Pacific Power & Light Company—May 19, 1915."

Exhibit

- | No. | Description |
|-----|--|
| 40 | Letter dated January 30, 1941 from Will T. Neill to James H. Flynn; letter dated January 27, 1941 from D. W. Jack to Will T. Neill; and "Statement of American Power & Light Company's Cost of Performance of Agreement with Pacific Power & Light Company dated July 16, 1930." |
| 41 | Statement of "Investment in the Companies and Properties transferred to Pacific Power & Light Company under agreement with Weld M. Stevens dated July 23, 1910." |
| 42 | Statement entitled, "Pacific Power & Light Company, Reserve for Retirements (Depreciation) of Utility Plant as of December 31, 1936." |
| 43 | Tabulation entitled, "Pacific Power & Light Company, Reconciliation of Amended Reclassification Summary Statement of Commission Staffs with Reclassification Summary Statements as submitted by Company as of January 1, 1937." |
| 44 | Tabulation entitled, "Pacific Power & Light Company, Analysis of Costs Incurred by American Power & Light Co. in 1910 Transaction." |

Exhibit

- | No. | Description |
|-----|--|
| 45 | Tabulation entitled, "Pacific Power & Light Company, Amended Reclassification Summary Statement (Reflecting Adjustments of the Staffs of the Federal Power Commission and Public Utilities Commissioner of Oregon)." |
| 46 | Tabulation entitled, "Pacific Power & Light Company, Analysis of Account 100.5, Electric Plant Acquisition Adjustments, January 1, 1937." |
| 47 | Statement entitled, "Pacific Power & Light Company, Analysis of Account 107, Electric Plant Adjustments as Adjusted by Commission Staffs." |
| 48 | Excerpt from annual report of Pacific Power & Light Company to Public Utilities Commissioner of Oregon. |
| 49 | Uniform System of Accounts for Electric Utilities prescribed by Public Utilities Commissioner of Oregon, dated 1941. |
| 50 | Uniform Classification of Accounts for Electrical Utilities, effective January 1, 1925, prescribed by Public Service Commission of Oregon. |
| 51 | 1936 National Association of Railroad and Utilities Commissioners Uniform System of Accounts for Electric Utilities prescribed by the Department of Public Service of Washington. |

Exhibit

No.	Description
52	Tabulation entitled, "Pacific Power & Light Company, Retirement and Depreciation Reserve for the State of Oregon."
53	Tabulation entitled, "Pacific Power & Light Company, Retirement and Depreciation Reserve for the State of Washington."
54	Tabulation entitled, "Pacific Power & Light Company, Analysis of Account 108 as shown in Revised Statement B, Page 47."

Note: Exhibits Nos. 52, 53 and 54 were received in the record after the hearing was adjourned by stipulation of counsel dated April 8, 1942 (Item 17 herein).

- (5) The following documents, which were received in evidence by reference without assignment of exhibit numbers:

Description

Petition of Public Utilities Commissioner of Oregon to intervene, filed with the Federal Power Commission on July 21, 1941.

Petition of American Power & Light Company to intervene filed with the Federal Power Commission on August 28, 1941.

Description

Annual Report (FPC Form No. 1) to the Federal Power Commission of Pacific Power & Light Company for the year ended December 31, 1937.

Annual Report (FPC Form No. 1) to the Federal Power Commission of Pacific Power & Light Company for the year ended December 31, 1938.

Annual Report (FPC Form No. 1) to the Federal Power Commission of Pacific Power & Light Company for the year ended December 31, 1939.

Annual Report (FPC Form No. 1) to the Federal Power Commission of Pacific Power & Light Company for the year ended December 31, 1940.

Note: The Annual Reports are not included physically by agreement of counsel.

- (6) Order to show cause and fixing date of hearing entered April 16, 1940
- (7) Designation of Examiner Simpson to preside at hearing filed May 16, 1940
- (8) Order to show cause and fixing date of hearing, etc., entered July 1, 1941
- (9) Order permitting intervention of Public Utilities Commissioner of Oregon entered August 9, 1941

- (10) Order postponing hearing entered August 9, 1941
- (11) Order permitting American Power & Light Company to intervene entered September 16, 1941
- (12) Petition to intervene of Department of Public Service of Washington filed September 23, 1941
- (13) Designation of Trial Examiner Gray filed September 24, 1941
- (14) Order permitting Department of Public Service of Washington to intervene entered September 26, 1941
- (15) Pacific Power & Light Company's motion to dismiss filed September 29, 1941
- (16) Pacific Power & Light Company's answer to orders entered July 1 and August 9, 1941, filed October 7, 1941 (original answer said to have been filed September 29, 1941, with Examiner at hearing.)
- (17) Stipulation of counsel relative to disposition of certain amounts and admitting in evidence Exhibits 52, 53 and 54 filed April 9, 1942
- (18) Opinion No. 84 and order directing accounting entries, etc., entered and filed November 24, 1942
- (19) Pacific Power & Light Company's application for stay filed December 26, 1942

- (20) Pacific Power & Light Company's letter of transmittal dated December 24, 1942 and certified copies of entries filed December 28, 1942
- (21) Pacific Power & Light Company's application for rehearing filed December 31, 1942
- (22) Intervener's, American Power & Light Company, application for rehearing filed December 31, 1942
- (23) Order extending time within which to file certified copies of entries required by order of November 24, 1942, entered December 31, 1942
- (24) Order denying applications for rehearing entered January 13, 1943

All of which constitute the record of the Federal Power Commission in In the Matter of Pacific Power & Light Company, Docket No. IT-5611.

In Witness Whereof, I hereunto subscribe my hand and cause the seal of the Federal Power Commission to be affixed this 5th day of April, 1943 at Washington, D. C.

[Seal]

LEON M. FUQUAY

Secretary.

[Endorsed]: No. 10386. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Power & Light Company, and American Power & Light Company, Petitioners, vs. Federal Power Commission, Respondent. Transcript of the Record. Upon Petition for Review of Order of the Federal Power Commission.

Filed April 12, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10386

PACIFIC POWER & LIGHT COMPANY, and
AMERICAN POWER & LIGHT COMPANY,
Petitioners,

vs.

FEDERAL POWER COMMISSION,
Respondent.

PETITIONERS' STATEMENT OF POINTS

Come now Pacific Power & Light Company and American Power & Light Company, petitioners in the above-entitled cause, and adopt the assignments of error set forth in Article XI, and in paragraphs (1) to (15), inclusive, of Article XI, of their Peti-

tion for Review of Order of Federal Power Commission, filed herein on March 11, 1943, as their Statement of the Points on which petitioners intend to rely on the review in said cause.

Dated April 30, 1943.

JOHN A. LAING,
HENRY S. GRAY,
L

Public Service Building,
Portland, Oregon

Attorneys for Petitioner,
Pacific Power & Light
Company;

A. J. G. PRIEST,
L

Two Rector Street,
New York, New York,

ADRIAN L. FOLEY,
L

14 Wall Street
New York, New York,

Attorneys for Petitioner,
American Power &
Light Company.

LAING GRAY & SMITH,

Portland, Oregon;

REID & PRIEST,

WHITE & CASE,

New York, New York,

Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 1943, I served the foregoing document, entitled "Petitioners' Statement of Points", upon the Federal Power Commission, by mailing a copy thereof, properly addressed, postage prepaid, to Charles V. Shannon, Esquire, general counsel for the Federal Power Commission, at the office of said Commission at Washington, D. C.

Dated at Portland, Oregon, this 30th day of April, 1943.

JOHN A. LAING

Of Attorneys for Petitioners.

[Endorsed]: Filed May 3, 1943. Paul P. O'Brien, Clerk.

No. 10386

United States
Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC POWER & LIGHT COMPANY, and
AMERICAN POWER & LIGHT COMPANY

Petitioners,

vs.

FEDERAL POWER COMMISSION,

Respondent.

SUPPLEMENTAL
Transcript of the Record

UPON PETITION TO REVIEW AN ORDER OF THE
FEDERAL POWER COMMISSION

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10,386

PACIFIC POWER & LIGHT COMPANY, and
AMERICAN POWER & LIGHT COMPANY
Petitioners,

vs.

FEDERAL POWER COMMISSION,
Respondent.

SUPPLEMENTAL CERTIFICATION OF
TRANSCRIPT OF RECORD OF FEDERAL
POWER COMMISSION

I, Leon M. Fuquay, Secretary of the Federal Power Commission and official custodian of the records of said Commission, do hereby certify that the attached are true copies of:

(1) Letter of August 10, 1943 from John A. Laing to Leon M. Fuquay, Secretary, Federal Power Commission, transmitting on behalf of Pacific Power & Light Company, certified copy of that company's Journal Entry Voucher No. 519, dated July 27, 1943, transferring \$4,121,981.41 from Account 100.5, Electric Plant Acquisition Adjustments, to Account 107, Electric Plant Adjustments, in compliance with the provisions of Paragraph (A) of the Commission's order of November 24, 1942. (Vol. VIII, Page 2327.)

(2) Pacific Power & Light Company Journal Entry Voucher No. 519. (Vol. VIII, Page 2328.)

(3) Letter of August 16, 1943 from J. H. Gutride, Acting Secretary of Federal Power Commission to John A. Laing, acknowledging receipt of letter of August 10, 1943 and Journal Entry Voucher No. 519, both as described above. (Vol. VIII, Page 2329.)

All of which completes the record of the Federal Power Commission in the Matter of Pacific Power & Light Company, Docket No. IT-5611.

In Witness Whereof, I hereunto subscribe my hand and cause the seal of the Federal Power Commission to be affixed this 24th day of August 1943, at Washington, D. C.

(Seal)

LEON M. FUQUAY

Secretary.

[Endorsed]: Filed Aug. 30, 1943. Paul P. O'Brien, Clerk.

(Vol. VIII, page 2327)

Laing Gray & Smith
Law Offices
Public Service Building
Portland, Oregon

John A. Laing
Henry S. Gray
Allan A. Smith
Frederic A. Fisher
Francis F. Hill

August 10, 1943

Federal Power Commission Aug 12 1943 Re-
ceived.

Received Aug 13 1943 Division of Original Cost.

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington, D. C.

Re: Pacific Power & Light Company
FPC Docket No. IT-5611

Federal Power Commission Docketed Aug 12
1943 Docket Section Secretary's Office.

Dear Sir:

In behalf of Pacific Power & Light Company, we are transmitting herewith certified copy of that company's Journal Entry Voucher No. 519, dated July 27, 1943, recording compliance by the company with the provisions of Paragraph (A) of the Commission's Order of November 24, 1942, requir-

ing the company to transfer from Account 100.5 to Account 107 the amount of \$4,121,981.41.

The company's compliance with this paragraph of the Order eliminates Paragraph (A) from the issues presented by the Petition for Review of this order filed in the United States Circuit Court of Appeals for the Ninth Circuit, and will have the effect of limiting the issues on that review to the questions involving Paragraphs (B) and (H) of the Order, and Paragraph (O) as applied to Paragraphs (B) and (H), relating to the "disposition" of the amounts now recorded in Account 107 and Account 100.5, respectively.

We are sending copies of this letter, with copies of the Journal Voucher, to Charles V. Shannon, General Counsel for the Commission, and to Messrs. A. J. G. Priest and Adrian L. Foley, counsel for American Power & Light Company, one of the petitioners in the pending review.

Very truly yours,

/s/ JN. A. LAING

Acknowledged Aug 12 1943 Secretary.

Received Aug 13 1943 Accounts, Finance & Rates.

Federal Power Commission
Aug 12 1943
Received

Vol. VIII, page 2328

Form 57

PACIFIC POWER & LIGHT COMPANY

Copy
Journal Entry Voucher No. 519

July 27, 1943

Utility Plant Adjustments, 107

To

Utility Plant, 100

Utility Plant Acquisition Adjustments, 100.5

4,121,981.41

4,121,981.41

To record the compliance by the Company with the provisions of Paragraph "A" of Federal Power Commission's Order, dated November 24, 1942, Docket No. IT-5611, requiring that "Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 107, Electric Plant Adjustments, the amount of \$4,121,981.41".

J. A. L. Aug. 9, 1943 O.K. P.B.M.

(Paul B. McKee)

(President of the Company)

Certified a true copy:

/s/ J. G. HAWKINS

Secretary and Treasurer

Entered:

Certified Correct

Approved:

J. G. HAWKINS

Treasurer or Assistant Treasurer

vs. Federal Power Commission

567

Via Air Mail

(Vol. VIII, page 2329)

In the Matter of
Pacific Power & Light Company,
Docket No. IT-5611

Aug 16 1943

John A. Laing, Esq.,
Public Service Building,
Portland, Oregon.

Dear Mr. Laing:

This will acknowledge receipt of your letter of August 10, 1943, transmitting, on behalf of Pacific Power & Light Company, a certified copy of that company's Journal Entry Voucher No. 519, dated July 27, 1943, transferring \$4,121,981.41 from Account 100.5, Electric Plant Acquisition Adjustments, to Account 107, Electric Plant Adjustments in compliance with the provisions of Paragraph (A) of the Commission's order of November 24, 1942, in the above-entitled matter.

As you state, this compliance with Paragraph (A) of the order of November 24, 1942, eliminates such Paragraph from the issues presented by the Petition for Review of the order, filed in the United States Circuit Court of Appeals for the Ninth Circuit (*Pacific Power & Light Company, et al. v. Federal Power Commission*, No. 10368). The effect of this compliance, however, on the issues presented by the Petition for Review as they relate to Paragraphs (B), (H) and (O) of the order is a matter

for legal argument and this letter is not to be construed as an acquiescence in the views expressed in your letter.

Very truly yours,
/s/ J. H. GUTRIDE
Acting Secretary.

cc—A. J. G. Priest, Esq.,
c/o Reid & Priest,
2 Rector Street,
New York, N. Y.

Adrian L. Foley, Esq.,
c/o White & Case,
14 Wall Street,
New York, N. Y.

[Endorsed]: No. 10386. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Power & Light Company and American Power & Light Company, Petitioners, vs. Federal Power Commission, Respondent. Supplemental Transcript of the Record. Upon Petition to Review an Order of the Federal Power Commission.

Filed August 31, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

